

OFFICIAL CODE OF GEORGIA ANNOTATED

2012 Supplement

Including Acts of the
2012 Regular Session of the General Assembly

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 38 2009 Edition

Title 49. Social Services
Title 50. State Government

Including Notes to the Georgia Reports and the
Georgia Appeals Reports

**Place this Supplement Alongside the Corresponding
Volume of Main Set**

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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TITLE 49

SOCIAL SERVICES

Chap.

1. General Provisions, 49-1-1 through 49-1-9.
2. Department of Human Services, 49-2-1 through 49-2-25.
3. County and District Departments, Boards, and Directors of Family and Children Services, 49-3-1 through 49-3-8.
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- 4A. Department of Juvenile Justice, 49-4A-1 through 49-4A-18.
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9. Transfer of Division of Rehabilitation Services to Department of Labor, 49-9-1 through 49-9-42.
10. Georgia Board for Physician Workforce, 49-10-1 through 49-10-6.

CHAPTER 1

GENERAL PROVISIONS

Sec.		director, or employee or official
49-1-5.	Suspension and removal of county board member, county	of department.

49-1-5. Suspension and removal of county board member, county director, or employee or official of department.

(a) In order that the public welfare laws of this state may be better enforced, the Governor is authorized and empowered to suspend any member of any county board, any county director, or any employee or official of the department whenever he or she shall find that good cause for such suspension exists. Such suspension shall be by executive order of the Governor, which shall state the reason therefor. A copy of such order of suspension shall be sent to the person so suspended within five days after it is issued, by registered or certified mail or statutory overnight delivery, return receipt requested, together with a notice from the Governor or his or her executive secretary that the suspended person may be heard before the Governor at such time as may be stated

in the notice, which hearing shall be not less than ten nor more than 20 days from the date of the notice. Upon such hearing, if the Governor shall find that good cause for the removal of the person so suspended exists, he or she is authorized and empowered to remove such member of any county board, any county director, or any employee or official in the department; whereupon, such person's tenure of office or employment shall terminate, subject to the right of appeal granted to any employee by or under authority of Chapter 20 of Title 45, and the vacancy shall be filled as provided by law. If the Governor shall find that good cause for the removal of such person does not exist, he or she shall, by appropriate executive order, restore him or her to duty.

(b) In addition to removal by the Governor as specified in subsection (a) of this Code section, the director of the Division of Family and Children Services may terminate the employment of any county director or district director subject to any right of appeal granted to such terminated director by or under the authority of Chapter 20 of Title 45, and the vacancy shall be filled as provided by law. (Ga. L. 1941, p. 485, § 3; Ga. L. 2000, p. 240, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-93/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “by or under authority of Chapter 20 of Title 45” for “under the State Personnel Administration by Chapter 20 of Title 45” in the next-to-last sentence of subsection (a); and substituted “granted to such terminated director by or under the authority of Chapter 20 of Title 45” for “such director may have under the State Personnel Administration by Chapter 20 of Title 45” near the middle of subsection (b).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

CHAPTER 2

DEPARTMENT OF HUMAN SERVICES

Article 1

General Provisions

Sec.

49-2-2.1. Department of Human Ser-

vices becomes successor-in-interest to all rights, duties, and obligations of former Department of Human Resources.

ARTICLE 1

GENERAL PROVISIONS

49-2-2.1. Department of Human Services becomes successor-in-interest to all rights, duties, and obligations of former Department of Human Resources.

(a) The Department of Human Services shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Human Services by proper authority or as otherwise provided by law.

(b) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Human Services. In all such instances, the Department of Human Services shall be substituted for the Department of Human Resources, and the Department of Human Services shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Human Services in similar capacities, as determined by the commissioner of human services. Such employees shall be subject to the employment practices and policies of the Department of Human Services on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Transferred employees who were subject to the state system of personnel administration provided for by Chapter 20 of Title 45 will lose no rights granted under such system as a result of such transfer. Retirement

ment rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Human Services.

(d) On July 1, 2009, the Department of Human Services shall receive custody of the state owned real property in the custody of the Department of Human Resources on June 30, 2009, and which pertains to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1. (Code 1981, § 49-2-2.1, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2012, p. 446, § 2-94/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of the third sentence of subsection (c) for the former provisions, which read: "Employees who are subject to the rules of the State Personnel Board and thereby under the State Personnel Administration and who are transferred to the department shall retain all existing rights under the State Personnel Administration."

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

CHAPTER 3

COUNTY AND DISTRICT DEPARTMENTS, BOARDS,
AND DIRECTORS OF FAMILY AND CHILDREN
SERVICES

Sec. 49-3-4.	Appointment of staff; salaries; power of commissioner to transfer employees.	Sec. 49-3-7.	Removal of county director for falsification of qualifications.
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49-3-4. Appointment of staff; salaries; power of commissioner to transfer employees.

(a) The county department staff necessary to administer welfare activities within the county shall be appointed pursuant to the rules and regulations of the Department of Human Services and the State

Personnel Board and subject to the approval of the commissioner of human services. Staff appointments shall meet the qualifications prescribed by the department.

(b) The salaries of the members of the staff shall be fixed by the county director in conformity with the salary schedule prescribed by the Department of Human Services.

(c) The commissioner shall have power to transfer from one county to another or from one district to another any employee of a county department. (Ga. L. 1937, p. 355, §§ 12, 14; Ga. L. 1951, p. 282, § 1; Ga. L. 1963, p. 222, § 2; Ga. L. 2000, p. 240, § 4; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-95/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" in the first sentence of subsection (a).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

49-3-7. Removal of county director for falsification of qualifications.

The State Personnel Board and the Department of Administrative Services shall remove from office any county director who has falsified any statement relating to his or her education, social welfare service, or other qualification, in any particular, whether material or immaterial. The application of the county director for examination, on file with the Department of Administrative Services, shall not be allowed to be varied by other evidence offered by the county director; the application itself shall be the controlling factor in the determination of its truth or untruth. (Ga. L. 1945, p. 689, §§ 1, 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-96/HB 642.)

The 2012 amendment, effective July 1, 2012, twice substituted "Department of Administrative Services" for "State Personnel Administration" in this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

CHAPTER 4

PUBLIC ASSISTANCE

Article 2

Old-Age Assistance

Sec.
49-4-33. Duties of department under this article.

Article 3

Aid to the Blind

49-4-53. Duties of department under this article.

Article 4

Aid to the Disabled

49-4-82. Duties of department under this article.

Article 7

Medical Assistance Generally

49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.
49-4-156. Tax exemption for health maintenance organizations with respect to contracts pursuant to this article [Repealed].

Article 7B

State False Medicaid Claims Act

49-4-168. Definitions.

Sec.

49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.
49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation by private person; stay of discovery; receipt of proceeds from civil judgment by private person and Indigent Care Trust Fund.
49-4-168.3. Standard of proof; procedure; intervention by Attorney General.
49-4-168.4. Protection of employees from discrimination; relief; statute of limitations.
49-4-168.5. Statute of limitations.

Article 9

Temporary Assistance for Needy Families

49-4-183. Administration of article by department; promulgation of rules and regulations by board; duties of department.
49-4-193. Established drug testing; ineligibility for benefits based upon positive tests; drug treatment; impact of drug use by parents on children; confidentiality; exceptions.

ARTICLE 1

GENERAL PROVISIONS

49-4-6. Reserves, income, and resources to be disregarded.

Law reviews. — For article, “Special Needs Trusts: A Planning Tool with Promises,” see 16 (No. 2) Ga. St. B.J. 18 (2010).

ARTICLE 2
OLD-AGE ASSISTANCE

49-4-33. Duties of department under this article.

The department shall:

(1) Supervise the administration of assistance under this article by the county departments;

(2) Take such action as may be necessary or desirable for carrying out this article;

(3) Prescribe the form of and print and supply to the county departments such forms as it may deem necessary and advisable; and

(4) Publish in print or electronically an annual report and such interim reports as may be necessary. (Ga. L. 1937, p. 311, § 4; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in paragraph (4).

ARTICLE 3
AID TO THE BLIND

49-4-53. Duties of department under this article.

The department shall:

(1) Supervise the administration of assistance under this article by the county departments;

(2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out this article;

(3) Establish the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance;

(4) Prescribe the form of and print and supply to the county departments such forms as it may deem necessary and advisable;

(5) Publish in print or electronically an annual report and such interim reports as may be necessary;

(6) Designate a suitable number of ophthalmologists and optometrists to examine applicants and recipients of assistance to the blind;

(7) Fix the fees to be paid to ophthalmologists and optometrists for examinations of applicants, such fees to be paid out of funds allocated to the department or to the county departments; and

(8) Initiate or cooperate with other agencies in developing measures for the prevention of blindness; the restoration of eyesight; the vocational adjustment of blind persons, including employment in regular industries, independent business, sheltered workshops, or home industry; and the instruction of the adult blind in their homes. (Ga. L. 1937, p. 568, § 5; Ga. L. 1952, p. 233, § 2; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in paragraph (5).

ARTICLE 4

AID TO THE DISABLED

49-4-81. Eligibility for assistance under this article.

Law reviews. — For article, “Special Needs Trusts: A Planning Tool with Promises,” see 16 (No. 2) Ga. St. B.J. 18 (2010).

49-4-82. Duties of department under this article.

The department shall:

(1) Supervise the administration by the county departments of assistance to the needy totally and permanently disabled under this article;

(2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out this article;

(3) Prescribe the form of and print and supply to the county department such forms as it may deem necessary and advisable; and

(4) Publish in print or electronically an annual report and such interim reports as may be necessary. (Ga. L. 1952, p. 15, § 4; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in paragraph (4).

ARTICLE 7

MEDICAL ASSISTANCE GENERALLY

49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.

(a) The Board of Community Health is authorized to establish regulations regarding the manner in which the appeals set forth in subsection (b) of this Code section shall be conducted.

(b)(1) Any applicant for medical assistance whose application is denied or is not acted upon with reasonable promptness and any recipient of medical assistance aggrieved by the action or inaction of the Department of Community Health as to any medical or remedial care or service which such recipient alleges should be reimbursed under the terms of the state plan which was in effect on the date on which such care or service was rendered or is sought to be rendered shall be entitled to a hearing upon his or her request for such in writing and in accordance with the applicable rules and regulations of the department and the Office of State Administrative Hearings. As a result of the written request for hearing, a written recommendation shall be rendered in writing by the administrative law judge assigned to hear the matter. Should a decision be adverse to a party and should a party desire to appeal that decision, the party must file a request in writing to the commissioner or the commissioner's designated representative within 30 days of his or her receipt of the hearing decision. The commissioner, or the commissioner's designated representative, has 30 days from the receipt of the request for appeal to affirm, modify, or reverse the decision appealed from. A final decision or order adverse to a party, other than the agency, in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated, and the effective date of the decision or order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Each agency shall maintain a properly indexed file of all decisions in contested cases, which file shall be open for public inspection except those expressly made confidential or privileged by statute. If the commissioner fails to issue a decision, the initial recommended decision shall become the final administrative decision of the commissioner.

(2)(A) A provider of medical assistance may request a hearing on a decision of the Department of Community Health with respect to a denial or nonpayment of or the determination of the amount of reimbursement paid or payable to such provider on a certain item

of medical or remedial care of service rendered by such provider by filing a written request for a hearing in accordance with Code Sections 50-13-13 and 50-13-15 with the Department of Community Health. The Department of Community Health shall, within 15 business days of receiving the request for hearing from the provider, transmit a copy of the provider's request for hearing to the Office of State Administrative Hearings. The provider's request for hearing shall identify the issues under appeal and specify the relief requested by the provider. The request for hearing shall be filed no later than 15 business days after the provider of medical assistance receives the decision of the Department of Community Health which is the basis for the appeal.

(B) The Office of State Administrative Hearings shall assign an administrative law judge to hear the dispute within 15 days after receiving the request. The hearing is required to commence no later than 90 days after the assignment of the case to an administrative law judge, and the administrative law judge shall issue a written decision on the matter no later than 30 days after the close of the record except when it is determined that the complexity of the issues and the length of the record require an extension of these periods and an order is issued by an administrative law judge so providing, but no longer than 30 days. Such time requirements can be extended by written consent of all the parties. Failure of the administrative law judge to comply with the above time deadlines shall not render the case moot.

(C) A request for hearing by a nursing home provider shall stay any recovery or recoupment action.

(D) Should the decision of the administrative law judge be adverse to a party and should a party desire to appeal that decision, the party must file a request therefor, in writing, with the commissioner within ten days of his or her receipt of the hearing decision. Such a request must enumerate all factual and legal errors alleged by the party. The commissioner, or the commissioner's designated representative, may affirm, modify, or reverse the decision appealed from.

(3) A person or institution who either has been refused enrollment as a provider in the state plan or has been terminated as a provider by the Department of Community Health shall be entitled to a hearing; provided, however, that no entitlement to a hearing before the department shall lie for refusals or terminations based on the want of any license, permit, certificate, approval, registration, charter, or other form of permission issued by an entity other than the Department of Community Health, which form of permission is required by law either to render care or to receive medical assistance

in which federal financial participation is available. The final determination (subject to judicial review, if any) of such an entity denying issuance of such a form of permission shall be binding on and unreviewable by the Department of Community Health. In cases where an entitlement to a hearing before the Department of Community Health, pursuant to this paragraph, lies, the Department of Community Health shall give written notice of either the denial of enrollment or termination from enrollment to the affected person or institution; and such notice shall include the reasons of the Department of Community Health for denial or termination. Should such a person or institution desire to contest the initial decision of the Department of Community Health, he or she must give written notice of his or her appeal to the commissioner of community health within ten days after the date on which the notice of denial or notice of termination was transmitted to him or her. A hearing shall be scheduled and commenced within 20 days after the date on which the commissioner receives the notice of appeal; and the commissioner or his or her designee or designees shall render a final administrative decision as soon as practicable thereafter.

(c) If any aggrieved party exhausts all the administrative remedies provided in this Code section, judicial review of the final decision of the commissioner may be obtained by filing a petition within 30 days after the service of the final decision of the commissioner or, if a rehearing is requested, within 30 days after the decision thereon. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner. When the petitioner is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state. Copies of the petition shall be served upon the commissioner and all parties of record. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision, and any grounds upon which the petitioner contends that the decision should be reversed or modified. Judicial review of the commissioner's decision may be obtained in the same manner and under the same standards as are applicable to those contested cases which are reviewable pursuant to Code Section 50-13-19; provided, however, that no other provision of Chapter 13 of Title 50 shall be applicable to the department with the exception of Code Sections 50-13-13 and 50-13-15. Notwithstanding any other provision of law, a stay of the commissioner's final decision may be granted by a reviewing court to a provider of medical assistance only on condition that such provider posts bond with the commissioner in favor of the state, with good and sufficient surety thereon by a surety company licensed to do business in this state, in an amount determined by the commissioner to be sufficient to recompense

the state for all medical assistance which otherwise would not be paid to the provider but for the granting of such a stay. A stay may be granted and renewed for time intervals up to three months, so long as bond is posted for every interval of time in which the stay is in effect.

(d) All contested cases involving the imposition of a remedial or punitive measure against a nursing facility by the Department of Community Health shall be conducted in the manner provided for in subsection (l) of Code Section 31-2-8, but only if such remedial or punitive measure is based upon findings made by the Department of Community Health in its capacity as the state survey agency for the Georgia Medicaid program.

(e)(1) A dentist acting pursuant to subsection (b) of Code Section 33-21A-8 or a provider of medical assistance may request a hearing on a decision of a care management organization with respect to the provisions set forth in subsection (b) of Code Section 33-21A-8 or with respect to a denial or nonpayment of or the determination of the amount of reimbursement paid or payable to such provider on a certain item of medical or remedial care of service rendered by such provider by filing a written request for a hearing in accordance with Code Sections 50-13-13 and 50-13-15 with the Department of Community Health. The Department of Community Health shall, within 15 business days of receiving the request for hearing from the provider, transmit a copy of the provider's request for hearing to the Office of State Administrative Hearings but shall not be a party to the proceedings. The provider's request for hearing shall identify the care management organization with which the provider has a dispute, the issues under appeal, and specify the relief requested by the provider. The request for hearing shall be filed no later than 15 business days after the provider of medical assistance receives the decision of the care management organization which is the basis for the appeal. Notwithstanding any other provision of this title, an administrative law judge appointed pursuant to paragraph (2) of this subsection shall be authorized to allow a provider of medical assistance to consolidate pending complaints or claims against a care management organization that are based on the same or similar payment or coverage issues, as determined by such administrative law judge. Such consolidation shall include disposition of the same or similar claims through a single hearing that adjudicates the total amount of such consolidated claims.

(2) The Office of State Administrative Hearings shall assign an administrative law judge to hear the dispute within 15 days after receiving the request. The hearing is required to commence no later than 90 days after the assignment of the case to an administrative law judge, and the administrative law judge shall issue a written

decision on the matter no later than 30 days after the close of the record except when it is determined that the complexity of the issues and the length of the record require an extension of these periods and an order is issued by an administrative law judge so providing, but no longer than 30 days. Such time requirements can be extended by written consent of all the parties. Failure of the administrative law judge to comply with the above time deadlines shall not render the case moot.

(3) The decision of the administrative law judge shall be the final administrative remedy available to the provider. Review thereafter shall proceed in accordance with Code Section 50-13-19. The fees and expenses of the Office of State Administrative Hearings may, at the administrative law judge's discretion, be assessed against the party against whom the administrative law judge enters his or her order. (Ga. L. 1977, p. 384, § 12; Ga. L. 1988, p. 288, § 1; Ga. L. 1993, p. 1290, § 3; Ga. L. 1994, p. 1856, § 2; Ga. L. 1997, p. 679, § 2; Ga. L. 1998, p. 576, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2006, p. 775, §§ 4, 5/SB 572; Ga. L. 2008, p. 704, § 2/HB 1234; Ga. L. 2009, p. 453, § 1-53/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Code Section 31-2-8" for "Code Section 31-2-11" in the middle of subsection (d).

Law reviews. — For annual survey on administrative law, see 61 Mercer L. Rev. 1 (2009).

49-4-156. Tax exemption for health maintenance organizations with respect to contracts pursuant to this article.

Reserved. Repealed by Ga. L. 2010, p. 125, § 1, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 49-4-156, enacted by Ga. L. 2005, p. 1438, § 3/SB 140.

ARTICLE 7B

STATE FALSE MEDICAID CLAIMS ACT

49-4-168. Definitions.

As used in this article, the term:

(1) "Claim" includes any request or demand, whether under a contract or otherwise, for money or property, whether or not the Georgia Medicaid program or this state has title to such money or property, which is made to the Georgia Medicaid program, to any officer, employee, fiscal intermediary, grantee, agent, or contractor of the Georgia Medicaid program, or to other persons or entities if it results in payments by the Georgia Medicaid program, if the Georgia

Medicaid program provides, has provided, or will provide any portion of the money or property requested or demanded; if the Georgia Medicaid program will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded; or if the money or property is to be spent or used on behalf of or to advance the Georgia Medicaid program. A claim includes a request or demand made orally, in writing, electronically, or magnetically. Each claim may be treated as a separate claim.

(2) “Knowing” and “knowingly” requires no proof of specific intent to defraud and means that a person, with respect to information:

(A) Has actual knowledge of the information;

(B) Acts in deliberate ignorance of the truth or falsity of the information; or

(C) Acts in reckless disregard of the truth or falsity of the information.

(3) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(4) “Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee based or similar relationship, from statute or regulation, or from retention of any overpayment.

(5) “Person” means any natural person, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity with capacity to sue or be sued. (Code 1981, § 49-4-168, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, in the first sentence of paragraph (1), substituted “money or property, whether or not the Georgia Medicaid program or this state has title to such money or property” for “money, property, or services”, deleted “or” following “Georgia Medicaid program,”, inserted “, agent,” inserted “, has provided,”, substituted “demanded; if” for “demanded, or if”, and added “; or if the money or property is to be spent or used on behalf of or to advance the Georgia Medicaid program” at the

end; substituted “requires no proof of specific intent to defraud and means” for “mean” in the introductory paragraph of paragraph (2); deleted the former second sentence of subparagraph (2)(C), which read: “No proof of specific intent to defraud is required.”; added paragraphs (3) and (4); and redesignated former paragraph (3) as present paragraph (5).

Cross references. — Georgia Taxpayer Protection False Claims Act, § 23-3-120 et seq.

49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.

(a) Any person who:

(1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used or to be used by the Georgia Medicaid program and knowingly delivers, or causes to be delivered, less than all of such property or money;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit property or money to the Georgia Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit property or money to the Georgia Medicaid program,

shall be liable to the State of Georgia for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of subsection (a) of this Code section shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article. (Code 1981, § 49-4-168.1, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, substituted “material to a false or fraudulent claim” for “to get a false or fraudulent claim paid or approved by the Georgia Medicaid program” in paragraph (a)(2); substituted “knowingly delivers, or causes to be delivered, less than all of such property or money” for “, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person

receives a certificate of receipt” in paragraph (a)(4); substituted “Is” for “Being” at the beginning of paragraph (a)(5); and substituted the present provisions of paragraph (a)(7) for the former provisions, which read: “Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay, repay, or transmit money or property to the State of Georgia.”

49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation by private person; stay of discovery; receipt of proceeds from civil judgment by private person and Indigent Care Trust Fund.

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.

(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.

(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:

(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;

(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General; or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;

(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and

(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.

(d)(1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the

motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

- (A) Limiting the number of witnesses the person may call;
- (B) Limiting the length of the testimony of such witnesses;
- (C) Limiting the person's cross-examination of witnesses; or
- (D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.

(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery

for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i)(1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Georgia Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Georgia Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of Code Section 49-4-168.1 upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of Code Section 49-4-168.1, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(j) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(k) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund, or collection of taxes pursuant to any provisions of Title 48.

(1)(1) As used in this subsection, the term “original source” means an individual who:

(A) Prior to public disclosure, has voluntarily disclosed to the Attorney General the information on which allegations or transactions in a claim are based; or

(B) Has knowledge that is independent of and materially adds to publicly disclosed allegations or transactions and who has voluntarily provided such information to the Attorney General before filing a civil action under this Code section.

(2) The court shall dismiss a civil action or claim under this Code section, unless opposed by the Attorney General, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(A) In any criminal, civil, or administrative hearing in which the State of Georgia or its employee, agent, or contractor is a party;

(B) In a congressional, legislative, or other state or federal report, hearing, audit, or investigation; or

(C) From the news media,

unless the civil action is brought by the Attorney General or the person bringing the civil action is an original source of the information. (Code 1981, § 49-4-168.2, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, substituted “State of Georgia, by and through the Georgia Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program” for “Indigent Care Trust Fund to be used for the purposes set forth in Code Section 31-8-154” in the fourth sentence of

paragraph (i)(1) and in the third sentence of paragraph (i)(2); in subsection (j), deleted the introductory language and paragraphs (j)(1) and (j)(2), relating to certain civil actions and redesignated former paragraphs (j)(3) and (j)(4) as present subsections (j) and (k), respectively; inserted a comma following “refund” in subsection (k); and added subsection (l).

49-4-168.3. Standard of proof; procedure; intervention by Attorney General.

(a) In any civil action brought under this article, the State of Georgia or person bringing the civil action shall be required to prove all essential elements of the cause of civil action, including damages, by a preponderance of the evidence.

(b) Except as otherwise provided in this article, all civil actions brought under this article shall be governed by the provisions of Chapter 11 of Title 9, the “Georgia Civil Practice Act.”

(c) If the Attorney General elects to intervene and proceed with a civil action brought pursuant to this article, the Attorney General may file his or her own complaint or amend the complaint of a person who has brought a civil action under this article to clarify or add detail to the claims in which the Attorney General is intervening and to add any additional claims with respect to which the State of Georgia contends it is entitled to relief. For purposes of the statute of limitations, any such pleading by the Attorney General shall relate back to the filing date of the complaint of the person who originally brought the civil action, to the extent that the claim of the State of Georgia arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the original complaint by such person. (Code 1981, § 49-4-168.3, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, added subsection (c).

49-4-168.4. Protection of employees from discrimination; relief; statute of limitations.

(a) Any employee, contractor, or agent shall be entitled to all relief necessary to make such employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by such employee, contractor, agent or associated others in furtherance of a civil action under this Code section or other efforts to stop one or more violations of this article.

(b) Relief under subsection (a) of this Code section shall include reinstatement with the same seniority status that such employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. A civil action under this subsection may be brought in an appropriate court of this state for the relief provided in this Code section.

(c) Notwithstanding Code Section 49-4-168.5, a civil action under this Code section may not be brought more than three years after the date when the discrimination occurred. (Code 1981, § 49-4-168.4, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of this Code section for the former provisions, which read: "Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other

manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, on behalf of the employee or others, in furtherance of a civil action under this article, including investigation for, initiation of, testimony for, or assistance in a civil action filed or to be filed under this article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority

status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring a civil action in an appropriate court of the State of Georgia for the relief provided in this Code section."

49-4-168.5. Statute of limitations.

All civil actions under this article shall be filed pursuant to Code Section 49-4-168.2 within six years after the date the violation was committed, or four years after the date when facts material to the right of civil action are known or reasonably should have been known by the state official charged with the responsibility to act in the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed. (Code 1981, § 49-4-168.5, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, substituted "four years" for "three years" near the middle of this Code section.

49-4-168.6. Venue.

Editor's notes. — Ga. L. 2012, p. 127, § 2-1, effective July 1, 2012, reenacted this Code section without change. Refer to bound volume for text of this Code section.

ARTICLE 9

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Law reviews. — For article, "Child Welfare and Future Persons," see 43 Ga. L. Rev. 367 (2009).

49-4-183. Administration of article by department; promulgation of rules and regulations by board; duties of department.

(a) This article shall be administered by the Department of Human Services. The Board of Human Services shall issue such rules and regulations as may be necessary to administer this article properly and to comply with the requirements of Part A of Title IV of the federal Social Security Act, as amended, the state plan, and any future

amendments to such Act or plan. The initial rules and regulations for the Georgia TANF Program shall be promulgated by the board pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and specifically Code Section 50-13-4 no later than July 1, 1997.

(b) The board shall ensure that such rules and regulations provide for:

(1) Methods of administration necessary for the proper and efficient operation of the state plan for implementation of this article;

(2) Reasonable standards for determining eligibility and the extent of assistance available for recipients;

(3) Consideration of the income and resources of an applicant for assistance in determining eligibility;

(4) Personal responsibility obligations and work activity requirements consistent with Part A of Title IV of the federal Social Security Act, as amended, and the state plan, provided that programs included in the personal responsibility obligations established by the board shall include counseling on abstinence until marriage;

(5) Criteria which make an applicant ineligible to receive benefits under the Georgia TANF Program, including but not limited to those specified in Code Section 49-4-184;

(6) Specific conduct which would authorize the reduction or termination of assistance to a recipient, including but not limited to that specified in Code Section 49-4-185;

(7) Standards whereby certain obligations, requirements, and criteria will be waived for specific applicants or recipients based on hardship;

(8) An administrative hearing process with hearings to be conducted by the Office of State Administrative Hearings in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and subsection (b) of Code Section 49-4-13;

(9) Safeguards which restrict the use and disclosure of information concerning applicants for and recipients of assistance under this article and in accordance with Code Section 49-4-14 and Part A of Title IV of the federal Social Security Act, as amended;

(10) Immunizations for specified diseases for preschool age children as a condition of assistance being provided for such children, and the schedule of and standards for administering such immunizations, including the presentation of a certificate of immunization, unless:

(A) There is appropriate evidence from the local health department or a physician that an immunization sequence has been

started and can be completed within a period of up to 180 days, in which case a waiver of the immunization requirement for up to 180 days shall be granted;

(B) After examination by the local board of health or a physician, any preschool age child is found to have a physical disability which may make vaccination undesirable, in which case a certificate to that effect issued by the local board of health or the physician may be accepted in lieu of a certificate of immunization and shall exempt the child from obtaining a certificate of immunization until the disability is relieved;

(C) The parent or legal guardian furnishes an affidavit swearing or affirming that the immunization conflicts with the religious beliefs of the parent or legal guardian; or

(D) The implementation of such an immunization requirement violates any federal law or regulations or would result in the loss of any federal funds to this state; and

(11) The establishment and maintenance of individual development accounts. The funds in such accounts may be used for postsecondary educational expenses, the purchase of a first home, or business capitalization. The funds in such accounts shall not be considered in determining eligibility for cash assistance pursuant to 42 U.S.C. Section 604(h).

(c) The department shall:

(1) Supervise the administration of assistance pursuant to the Georgia TANF Program by the division of family and children services;

(2) Prescribe necessary forms and procedures to carry out the Georgia TANF Program, subject to the rules and regulations prescribed by the board pursuant to this article;

(3) Publish in print or electronically an annual report and such interim reports as may be necessary. The annual report and such interim reports shall be provided to the Governor and members of the General Assembly. The department shall not be required to distribute copies of the annual report or the interim reports to the members of the General Assembly but shall notify the members of the availability of the reports in the manner which it deems to be most effective and efficient. The annual report and interim reports shall contain the following:

(A) The total TANF caseload count;

(B) Quarterly and annual TANF reports, in full, prepared for submission to the federal government;

(C) The percentage of the TANF caseload and the number of individuals given a hardship exemption from the lifetime limit on cash assistance and a categorization of the reasons for such exemptions;

(D) The number of individuals who received transportation assistance and the cost of such assistance;

(E) The number of individuals who received diversionary assistance in order to prevent their requiring TANF assistance and the categories and cost of such diversionary assistance, and job acceptance and retention statistics;

(F) The number of individuals denied assistance due to a serious violent felony conviction;

(G) The number of mothers under 19 years of age who received assistance and their percentage of the total TANF caseload;

(H) The number of children receiving subsidized child care and the total and average per recipient cost of child care provided to TANF recipients;

(I) Data on teen pregnancy prevention;

(J) The number of families sanctioned;

(K) The number of legal immigrants receiving TANF benefits by category of immigration status;

(L) The number of families no longer eligible because of time limits;

(M) Follow-up information on job retention and earnings; and

(N) An evaluation of the effect of Code Section 49-4-186 on the number of births to TANF recipient families.

The information required under this paragraph shall be provided on a county-by-county basis where feasible; and

(4) Develop a plan, on or before January 1, 1998, to provide incentives for employers to hire those TANF recipients who have difficulty in finding employment. (Code 1981, § 49-4-183, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 128, § 49; Ga. L. 2005, p. 1036, § 39/SB 49; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence of paragraph c(3).

49-4-193. Established drug testing; ineligibility for benefits based upon positive tests; drug treatment; impact of drug use by parents on children; confidentiality; exceptions.

(a) As used in this Code section, the term "established drug test" means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 C.F.R. 11979, et seq., as amended) or other professionally valid procedures approved by the department; provided, however, that where possible and practicable, a swab test shall be used in lieu of a urinalysis.

(b) The department shall adopt rules and regulations for an established drug test which shall include the following:

- (1) Which illegal drugs will be the subject of testing;
- (2) Methods for assuring minimal privacy intrusions during collection of body fluid specimens for such testing;
- (3) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;
- (4) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results;
- (5) A list of laboratories qualified to conduct established drug tests;
- (6) A list of approved substance abuse treatment providers;
- (7) Procedures for persons undergoing drug testing, prior to the collection of body fluid specimens for such testing, to provide information regarding use of any drug pursuant to a medical prescription or as otherwise authorized by law which may affect the results of such test;
- (8) A requirement that the test be conducted no later than 48 hours after the application is approved by the department for TANF eligibility. Proof of eligibility from the department shall be issued to the applicant. The applicant shall show proof of eligibility to an authorized test examiner prior to submitting to the test; and
- (9) A requirement that any applicant who demonstrates proof of active and current Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and no authorized test examiner shall conduct a drug test if an applicant demonstrates active and current Medicaid benefits unless the applicant presents a receipt proving that he or she has paid the required drug screening

application fee. Eligible applicants who do not have active and current Medicaid benefits shall be responsible for paying the full cost of administering the drug test upon presentation to an authorized examiner.

(c) The department shall require a drug test consistent with subsection (b) of this Code section to screen each individual who applies for assistance. The cost of drug testing shall be the responsibility of the individual tested, provided that the individual does not submit proof of active Medicaid benefits to subsidize the cost of such drug testing pursuant to paragraph (9) of subsection (b) of this Code section. No assistance payment shall be delayed because of the requirements of this Code section, and any payments made prior to the department's receipt of a test result showing a failure shall be recoverable.

(d) Any recipient of cash assistance under this article who tests positive for controlled substances as a result of a drug test required under this Code section shall be ineligible to receive TANF benefits as follows:

(1) For a first positive result, the recipient shall be ineligible for TANF benefits for one month and until he or she tests negative in a retest;

(2) For a second positive result, the recipient shall be ineligible for TANF benefits for three months and until he or she tests negative in a retest; and

(3) For a third and each subsequent positive result, the recipient shall be ineligible for TANF benefits for one year and until he or she tests negative in a retest unless the individual meets the requirements of subsection (f) of this Code section.

(e) The department shall:

(1) Provide notice of drug testing to each individual at the time of application. The notice shall advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual shall bear the cost of testing. If the individual tests negative for controlled substances, the department shall increase the amount of the initial TANF benefit by the amount paid by the individual for the drug testing. However, if the individual used an active and current Medicaid benefit pursuant to paragraph (9) of subsection (b) of this Code section to subsidize the cost of the test, the individual shall not be eligible for direct TANF reimbursement. The individual shall be advised that the required drug testing may be avoided if the individual does not apply for TANF benefits. Dependent children under the age of 18 are exempt from the drug testing requirement;

(2) Require that for two-parent families, one parent shall comply with the drug testing requirement;

(3) Require that any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative shall comply with the drug testing requirement;

(4) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over the counter medication he or she is taking;

(5) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (1) and (4) of this subsection;

(6) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(7) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests;

(8) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of this Code section that the individual may reapply for those benefits six months after the date of the positive drug test if he or she meets the requirements of subsection (f) of this Code section; and

(9) Provide any individual who tests positive with a list of substance abuse treatment providers approved by the department which are available in the area in which he or she resides. Neither the department nor the state shall be responsible for providing or paying for substance abuse treatment.

(f) An individual who tests positive for an illegal drug and is denied TANF benefits for one year may reapply for TANF benefits after six months if the individual can document the successful completion of a substance abuse treatment program offered by a provider approved by the department. An individual who has met the requirements of this subsection and reapplies for TANF benefits shall also pass an initial drug test and meet the requirements of subsection (c) of this Code section. Any drug test conducted while the individual is undergoing substance abuse treatment shall meet the requirements of subsection (b) of this Code section. The cost of any drug testing provided under this Code section and substance abuse treatment shall be the responsibility of the individual being tested and receiving treatment. An individual

who fails the drug test required under subsection (c) of this Code section may reapply for TANF benefits under this subsection only once.

(g) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this Code section:

(1) The dependent child's eligibility for TANF benefits shall not be affected;

(2) An appropriate protective payee shall be designated to receive benefits on behalf of the child; and

(3) The parent may choose to designate another individual to receive benefits for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual approved by the department. The designated individual shall also undergo drug testing before being approved to receive benefits on behalf of the child. If the designated individual tests positive for controlled substances, he or she shall be ineligible to receive benefits on behalf of the child.

(h) The results of any drug test done according to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records. Such results shall not be used as a part of a criminal investigation or criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed to any person or entity without the express written consent of the person tested or his or her heirs or legal representative. All such records shall be destroyed and deleted five years after the date of the test.

(i) No testing shall be required by the provisions of this Code section for any person whom the department determines is significantly hindered, because of a physical or mental handicap or developmental disability, from doing so or for any person enrolled in an enhanced primary care case management program operated by the Department of Community Health, Division of Medical Assistance to serve frail elderly and disabled beneficiaries to improve the health outcomes of persons with chronic health conditions by linking primary medical care with home and community based services. In addition, no testing shall be required by the provisions of this Code section for any individuals receiving or on a waiting list for long-term services and supports through a non-Medicaid home and community based services program or for any individual residing in a facility such as a nursing home, personal care home, assisted living community, intermediate care facility for the mentally retarded, community living arrangement, or host home.

(j) The department shall adopt rules to implement this Code section. (Code 1981, § 49-4-193, enacted by Ga. L. 2012, p. 91, § 3/HB 861.)

Effective date. — This Code section became effective July 1, 2012.

Cross references. — Drug-free workplace programs, T. 34, C. 9, A. 11. Random drug testing of employees in high risk jobs, T. 45, C. 20, A. 5. Drug testing for state employment, T. 45, C. 20, A. 6.

Editor's notes. — Ga. L. 2012, p. 91, § 1/HB 861, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Social Responsibility and Accountability Act.'"

Ga. L. 2012, p. 91, § 2/HB 861, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to:

"(1) Ensure that TANF funds are ultimately

utilized for the intended purpose of alleviating the effects of poverty and are not diverted to illicit drug use;

"(2) Protect children of poverty by ensuring such funds strengthen family life and reduce the danger that illicit drugs will be introduced into the home environment;

"(3) Assist adults addicted to drugs to avoid the temptation and restructure their lives by focusing on employment and becoming better parents; and

"(4) Ensure that the government does not subsidize the public health risk posed by drug use and the associated criminal activities."

CHAPTER 4A

DEPARTMENT OF JUVENILE JUSTICE

- Sec.
49-4A-5. Transfer of functions and employees of Division of Youth Services; personnel administration.
49-4A-8. Commitment of delinquent or unruly children; procedure; cost; return of mentally ill or retarded children; escapees; discharge; evidence of commitment; records; restitution.
49-4A-9. Sentence of youthful offenders; modification of order; review; participation in programs.
49-4A-11. Aiding or encouraging child to

- Sec.
escape; hindering apprehension of child.
49-4A-15. Guard lines.
49-4A-16. Unlawful crossing or passage of certain items across guard lines; penalty.
49-4A-17. Introduction of certain items into juvenile detention center or youth development center prohibited; commerce with incarcerated youth.
49-4A-18. Prohibited possession of certain goods by youth.

49-4A-5. Transfer of functions and employees of Division of Youth Services; personnel administration.

(a) The department shall carry out all functions and exercise all powers relating to the administration, supervision, and management of juvenile detention facilities, including youth development centers, and jurisdiction over said youth development centers and other juvenile detention facilities is vested in the department.

(b) Any employees of the Department of Juvenile Justice who became so employed by virtue of their transfer from the Division of Youth Services of the Department of Human Resources (now known as the

Department of Human Services) on June 30, 1992, shall retain their compensation and benefits and such may not be reduced. Transferred employees who were subject to the state system of personnel administration provided for by Chapter 20 of Title 45 will lose no rights granted under such system as a result of such transfer. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on July 1, 1992, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 1992. Accrued annual and sick leave possessed by said employees on June 30, 1992, shall be retained by said employees as employees of the department.

(c)(1) The department shall conform to federal standards for a merit system of personnel administration in the respects necessary for receiving federal grants and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(2) The department is authorized to employ, on a full-time or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(3) Classified employees of the department under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(4) All personnel of the department are authorized to be members of the Employees' Retirement System of Georgia created in Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this chapter to the department, or otherwise had by persons at the time of employment with the department, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the department. (Code 1981, § 49-4A-5, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 8; Ga. L. 1998, p. 128, § 49; Ga. L. 2009, p. 453, § 2-22/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-97/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "state system of personnel administration provided for by Chapter 20 of Title 45 will lose no rights granted

under such system as a result of such transfer" for "State Personnel Administration shall retain all existing rights under the State Personnel Administration" in the

second sentence of subsection (b); and substituted "State Personnel Board" for "State Personnel Administration" in paragraph (c)(3).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

49-4A-8. Commitment of delinquent or unruly children; procedure; cost; return of mentally ill or retarded children; escapees; discharge; evidence of commitment; records; restitution.

(a) When any child or youth is adjudged to be in a state of delinquency or unruliness under Article 1 of Chapter 11 of Title 15 and the court does not release such child or youth unconditionally or place him or her on probation or in a suitable public or private institution or agency, the court may commit him to the department as provided in said Article 1 of Chapter 11 of Title 15; provided, however, that no delinquent or unruly child or youth shall be committed to the department until the department certifies to the Governor that it has facilities available and personnel ready to assume responsibility for delinquent or unruly children and youths.

(b) When the court commits a delinquent or unruly child to the department, it may order the child conveyed forthwith to any facility designated by the department or direct that the child be left at liberty until otherwise ordered by the department under such conditions as will ensure his availability and submission to any orders of the department. If such delinquent or unruly child is ordered conveyed to the department, the court shall assign an officer or other suitable person to convey such child to any facility designated by the department, provided that the person assigned to convey a girl must be a female. The cost of conveying such child committed to the department to the facility designated by the department shall be paid by the county from which such child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

(c) When a court commits a delinquent or unruly child to the department, the court shall at once forward to the department a certified copy of the order of commitment and the court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the department all pertinent information in their possession with respect to the case. Such reports shall, if the department so requests, be made upon forms

furnished by the department or according to an outline provided by the department.

(d)(1) When a delinquent or unruly child has been committed to the department, the department shall, under rules and regulations established by the board, forthwith examine and study the child and investigate all pertinent circumstances of his life and behavior. The department shall make periodic reexaminations of all delinquent or unruly children within its control, except those on release under supervision of the department. Such reexaminations may be made as frequently as the department considers desirable and shall be made with respect to every child at intervals not exceeding one year. Failure of the department to examine a delinquent or unruly child committed to it or to reexamine him within one year of a previous examination shall not of itself entitle the child to discharge from control of the department but shall entitle the child to petition the committing court for an order of discharge; and the court shall discharge him unless the department, upon due notice, satisfies the court of the necessity of further control.

(2) The department shall keep written records of all examinations and reexaminations, of conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent or unruly child subject to its control. Records as may be maintained by the department with respect to a delinquent or unruly child committed to the department shall not be public records but shall be privileged records and may be disclosed by direction of the commissioner pursuant to federal law in regard to disseminating juvenile criminal history records only to those persons having a legitimate interest therein; provided, however, that the commissioner shall permit the Council of Juvenile Court Judges to inspect and copy such records for the purposes of obtaining statistics on juveniles.

(e) Except as provided by subsection (e.1) of this Code section and subsection (b) of Code Section 15-11-70, when a delinquent or unruly child has been committed to the department for detention and a diagnostic study for the purpose of determining the most satisfactory plan for the child's care and treatment has been completed, the department may:

(1) Permit the child liberty under supervision and upon such conditions as the department may believe conducive to acceptable behavior;

(2) Order the child's confinement under such conditions as the department may believe best designed to serve the child's welfare and as may be in the best interest of the public;

(3) Order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) Revoke or modify any order of the department affecting the child, except an order of final discharge, as often as conditions indicate to be desirable; or

(5) Discharge the child from control of the department pursuant to subsection (a) of Code Section 15-11-70 when it is satisfied that such discharge will best serve the child's welfare and the protection of the public.

(e.1)(1) When a child who has been adjudicated delinquent for the commission of a designated felony act as defined in Code Section 15-11-63 is released from confinement or custody of the department, it shall be the responsibility of the department to provide notice to any person who was the victim of the child's delinquent acts that the child is being released from confinement or custody.

(2) As long as a good faith attempt to comply with paragraph (1) of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by paragraph (1) of this subsection.

(3) When a child convicted of a felony offense in a superior court is released from confinement or custody of the department, the department shall provide written notice, including the delinquent or designated felony act committed, to the superintendent of the school system in which such child was enrolled or, if the information is known, the school in which such child was enrolled or plans to be enrolled.

(4) As long as a good faith attempt to comply with paragraph (3) of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide notice required by paragraph (3) of this subsection.

(f) As a means of correcting the socially harmful tendencies of a delinquent or unruly child committed to it, the department may:

(1) Require participation by youth in moral, academic, vocational, physical, and correctional training and activities, and provide youth the opportunity for religious activities where practicable in the institutions under the control and supervision of the department;

(2) Require such modes of life and conduct as may seem best adapted to fit and equip him for return to full liberty without danger to the public;

(3) Provide such medical, psychiatric, or casework treatment as is necessary; or

(4) Place him, if physically fit, in a park, maintenance camp, or forestry camp or on a ranch owned by the state or by the United States and require any child so housed to perform suitable conservation and maintenance work, provided that the children shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the children rather than to make the camps self-sustaining.

(g) When funds are available, the department may:

(1) Establish and operate places for detention and diagnosis of all delinquent or unruly children committed to it;

(2) Establish and operate additional treatment and training facilities, including parks, forestry camps, maintenance camps, ranches, and group residences necessary to classify and handle juvenile delinquents of different ages and habits and different mental and physical conditions, according to their needs; and

(3) Establish parole or aftercare supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become reestablished in the community and to lead socially acceptable lives.

(h) Whenever the department finds that any delinquent or unruly child committed to the department is mentally ill or mentally retarded, the department shall have the power to return such delinquent or unruly child to the court of original jurisdiction for appropriate disposition by that court or may, if it so desires, request the court having jurisdiction in the county in which the youth development center or other facility is located to take such action as the condition of the child may require.

(i)(1) A child who has been committed to the department as a delinquent or unruly child for detention in a youth development center or who has been otherwise taken into custody and who has escaped therefrom or who has been placed under supervision and broken the conditions thereof may be taken into custody without a warrant by a sheriff, deputy sheriff, constable, police officer, probation officer, parole officer, or any other officer of this state authorized to serve criminal process, upon a written request made by an employee of the department having knowledge of the escape or of the violation of conditions of supervision. Before a child may be taken into custody for violation of the conditions of supervision, the written request mentioned above must be reviewed by the commissioner or his designee. If the commissioner or his designee finds that probable cause exists to believe that the child has violated his conditions of supervision, he may issue an order directing that the child be picked up and returned to custody.

(2) The commissioner may designate as a peace officer who is authorized to exercise the power of arrest any employee of the department whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in its institutions, facilities, or programs, or any employee who is a line supervisor of any such employee. The commissioner also may designate as a peace officer who is authorized to exercise the power of arrest any employee of a person or organization which contracts with the department pertaining to the management, custody, care, and control of delinquent children retained by the person or organization, if that employee's full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in the department's institutions, facilities, or programs, or any employee who is a line supervisor of such employee. The commissioner may designate one or more employees of the department to investigate and apprehend delinquent and unruly children who have escaped from an institution or facility or who have broken the conditions of supervision; provided, however, that the employees so designated shall only be those with primary responsibility for the security functions of youth development centers or whose primary duty consists of the apprehension of youths who have escaped from such institutions or facilities or who have broken the conditions of supervision. An employee of the department so designated shall have the police power to investigate, to apprehend such children, and to arrest any person physically interfering with the proper apprehension of such children. An employee of the department so designated in the investigative section of the department shall have the power to obtain a search warrant for the purpose of locating and apprehending such children. Additionally, such employee, while on the grounds or in the buildings of the department's institutions or facilities, shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such institutions or facilities. Such employee shall be authorized to carry weapons, upon written approval of the commissioner, notwithstanding Code Sections 16-11-126 and 16-11-129. The commissioner shall also be authorized to designate any person or organization with whom the department contracts for services pertaining to the management, custody, care, and control of delinquent and unruly children detained by the person or organization as a law enforcement unit under paragraph (7) of Code Section 35-8-2. Any employee or person designated under this subsection shall be considered to be a peace officer within the meaning of Chapter 8 of Title 35 and must be certified under that chapter.

(3) For the purposes of investigation of delinquent or unruly children who have escaped from institutions or facilities of the

department or of delinquent or unruly children who are alleged to have broken the conditions of supervision, the department is empowered and authorized to request and receive from the Georgia Crime Information Center, established by Chapter 3 of Title 35, any information in the files of the Georgia Crime Information Center which will aid in the apprehension of such children.

(4) An employee designated pursuant to paragraph (2) of this subsection may take a child into custody without a warrant upon personal knowledge or written request of a person having knowledge of the escape or violation of conditions of supervision, or a child may be taken into custody pursuant to Code Section 15-11-45. When taking a child into custody pursuant to this paragraph, a designated employee of the department shall have the power to use all force reasonably necessary to take the child into custody.

(5) The child shall be kept in custody in a suitable place designated by the department and there detained until such child may be returned to the custody of the department.

(6) Such taking into custody shall not be termed an arrest; provided, however, that any person taking a child into custody pursuant to this subsection shall have the same immunity from civil and criminal liability as a peace officer making an arrest pursuant to a valid warrant.

(j) The department shall ensure that each delinquent or unruly child it releases under supervision or otherwise has suitable clothing, transportation to his home or to the county in which a suitable home or employment has been found for him, and such an amount of money as the rules and regulations of the board may authorize. The expenditure for clothing and for transportation and the payment of money to a delinquent or unruly child released may be made from funds for support and maintenance appropriated by the General Assembly to the department or to the institution from which such child is released or from local funds.

(k) Every child committed to the department as delinquent or unruly, if not already discharged, shall be discharged from custody of the department when he reaches his twenty-first birthday.

(l) Commitment of a delinquent or unruly child to the custody of the department shall not operate to disqualify such child in any future examination, appointment, or application for public service under the government either of the state or of any political subdivision thereof.

(m) A commitment to the department shall not be received in evidence or used in any way in any proceedings in any court, except in subsequent proceedings for delinquency or unruliness involving the

same child and except in imposing sentence in any criminal proceeding against the same person.

(n) The department shall conduct a continuing inquiry into the effectiveness of treatment methods it employs in seeking the rehabilitation of maladjusted children. To this end, the department shall maintain a statistical record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction and control of the department and shall tabulate, analyze, and publish in print or electronically annually these data so that they may be used to evaluate the relative merits of methods of treatment. The department shall cooperate with courts and public and private agencies in the collection of statistics and information regarding juvenile delinquency; arrests made; complaints, informations, and petitions filed; the disposition made thereof; and other information useful in determining the amount and causes of juvenile delinquency in this state. In order to facilitate the collection of such information, the department shall be authorized to inspect and copy all records of the court and law enforcement agencies pertaining to juveniles.

(o) When a child who is committed to the department is under court order to make certain restitution as a part of his treatment by the court, the requirement that the restitution be paid in full shall not cease with the order of commitment. The provision of the order requiring restitution shall remain in force and effect during the period of commitment and the department is empowered to enforce said restitution requirement and to direct that payment of funds or notification of service completed be made to the clerk of the juvenile court or another employee of that court designated by the judge. (Code 1981, § 49-4A-8, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1993, p. 313, § 1; Ga. L. 1995, p. 619, § 8; Ga. L. 1996, p. 1016, §§ 1, 2; Ga. L. 1997, p. 582, § 3; Ga. L. 2000, p. 20, § 26; Ga. L. 2006, p. 293, § 4/HB 1145; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 963, § 2-20/SB 308.)

The 2010 amendments. — The first 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the second sentence of subsection (n). The second 2010 amendment, effective June 4, 2010, deleted “, 16-11-128,” following “Section 16-11-126” near the end of the seventh sentence of paragraph (i)(2). See the editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 963, § 3-1, not codified by the General Assem-

bly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010 and shall not affect any prosecutions for acts occurring before June 4, 2010 and shall not act as an abatement of any such prosecution.

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

49-4A-9. Sentence of youthful offenders; modification of order; review; participation in programs.

(a) Any child who has previously been adjudged to have committed an act which is a felony if tried in a superior court and who, on a second or subsequent occasion, is convicted of a felony in a superior court may, in the discretion of the court, be sentenced into the custody of the department as otherwise provided by law or be committed as a youthful offender as authorized in Chapter 7 of Title 42; provided, further, that any child convicted of a felony punishable by death or by confinement for life shall only be sentenced into the custody of the Department of Corrections.

(b) Any final order of judgment by the court in the case of any such child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child. No commitment of any child to any institution or other custodial agency shall deprive the court of jurisdiction to change the form of the commitment or transfer the custody of the child to some other institution or agency on such conditions as the court may see fit to impose, the duty being constant upon the court to give to all children subject to its jurisdiction such oversight and control in the premises as will be conducive to the welfare of the child and the best interests of the state; provided, however, that the release or parole of any child committed to the department for detention in any of its institutions under the terms of this chapter during the period of one year from the date of commitment shall be had only with the concurrence and recommendation of the commissioner or the commissioner's designated representative; provided, further, that upon releasing or paroling any child adjudicated delinquent for the commission of a designated felony act as defined in Code Section 15-11-63 and committed to the department for detention in any of its institutions under the terms of this chapter, the department shall provide notice to any person who was the victim of the child's delinquent acts that the child is being released or paroled. As long as a good faith attempt to comply with the notice requirement of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by this subsection.

(c) After the expiration of one year from the date of commitment, the committing court shall review the case and make such order with respect to the continued confinement or release of the child back to the committing court for further disposition as the court deems proper.

(d) In the event adequate facilities are not available, the department shall have the right to transfer youths committed to the department under this Code section to the Department of Corrections for incarceration.

ation in an appropriate facility designated by the Department of Corrections.

(e) Any child under 17 years of age who is sentenced in the superior court and committed to the department may be eligible to participate in all youth development center programs and services including community work programs, sheltered workshops, special state sponsored programs for evaluation and services under the Georgia Vocational Rehabilitation Agency and the Department of Behavioral Health and Developmental Disabilities, and under the general supervision of youth development center staff at special planned activities outside of the youth development center. When such a child sentenced in the superior court is approaching his or her seventeenth birthday, the department shall notify the court that a further disposition of the child is necessary. The department shall provide the court with information concerning the participation and progress of the child in programs described in this subsection. The court shall review the case and determine if the child, upon becoming 17 years of age, should be placed on probation, have his or her sentence reduced, be transferred to the Department of Corrections for the remainder of the original sentence, or be subject to any other determination authorized by law. (Code 1981, § 49-4A-9, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1995, p. 619, § 9; Ga. L. 2000, p. 20, § 27; Ga. L. 2000, p. 1137, § 2; Ga. L. 2002, p. 1324, § 1-22; Ga. L. 2009, p. 453, § 3-4/HB 228; Ga. L. 2012, p. 303, § 3/HB 1146.)

The 2012 amendment, effective July 1, 2012, substituted “Georgia Vocational Rehabilitation Agency” for “Division of Re-

habilitation Services of the Department of Labor” in the first sentence of subsection (e).

RESEARCH REFERENCES

ALR. — State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Constitutional issues, 37 ALR6th 55.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — duty to register, re-

quirements for registration, and procedural matters, 38 ALR6th 1.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — expungement, stay or deferral, exceptions, exemptions, and waiver, 39 ALR6th 577.

49-4A-11. Aiding or encouraging child to escape; hindering apprehension of child.

(a) Any person who shall knowingly aid, assist, or encourage any child or youth who has been committed to the department to escape or to attempt to escape its control or custody shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(b) Any person who shall knowingly harbor or shelter any child or youth who has escaped the lawful custody or control of the department shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(c) Any person who shall knowingly hinder the apprehension of any child under the lawful control or custody of the department who has been placed by the department in one of its institutions or facilities and who has escaped therefrom or who has been placed under supervision and is alleged to have broken the conditions thereof shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Code 1981, § 49-4A-11, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1996, p. 988, § 3; Ga. L. 2012, p. 1339, § 1A/SB 366.)

The 2012 amendment, effective July 1, 2012, substituted “punished by imprisonment” for “imprisoned” near the end of subsections (a) through (c); and deleted former subsections (d) and (e), which read: “(d) Any person who shall knowingly provide to any child under the lawful control or custody of the department a gun, pistol, or any other weapon, any intoxicating liquor, any controlled substance listed in Code Section 16-13-27 as a Schedule III controlled substance, listed in Code Section 16-13-28 as a Schedule IV controlled substance, or listed in Code Section 16-13-29 as a Schedule V controlled substance, or an immediate precursor of any such controlled substance, or any dangerous drug as defined by Code Section 16-13-71, regardless of the amount, or any other harmful, hazardous, or illegal article or item which may be injurious to department personnel without the consent of the director of the institution providing care and supervision to the child shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.

“(e) Any child who shall knowingly possess a gun, pistol, or any other weapon, any intoxicating liquor, any controlled

substance listed in Code Section 16-13-27 as a Schedule III controlled substance, listed in Code Section 16-13-28 as a Schedule IV controlled substance, or listed in Code Section 16-13-29 as a Schedule V controlled substance, or an immediate precursor of any such controlled substance, or any dangerous drug as defined by Code Section 16-13-71, regardless of the amount, or any other harmful, hazardous, or illegal article or item which may be injurious to department personnel given to said child in violation of subsection (d) of this Code section while under the lawful custody or control of the department shall cause the department to file a delinquency petition in the court having jurisdiction; provided, however, if such person is 17 or older and is under the lawful custody or control of the department, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.” See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1339, § 3/SB 366, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to offenses committed on or after July 1, 2012.

49-4A-15. Guard lines.

Guard lines shall be established by the commissioner or his or her designated representative in charge at the various juvenile detention

centers and youth development centers in the same manner that land lines are established, except that, at each corner of the lines, signs must be used on which shall be plainly stamped or written: "Guard line of _____." Signs shall also be placed at all entrances and exits for vehicles and pedestrians at the institutions and at such intervals along the guard lines as will reasonably place all persons approaching the guard lines on notice of the location of the institutions. (Code 1981, § 49-4A-15, enacted by Ga. L. 2012, p. 1339, § 2/SB 366.)

Effective date. — This Code section became effective July 1, 2012. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1339,

§ 3/SB 366, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses committed on or after July 1, 2012.

49-4A-16. Unlawful crossing or passage of certain items across guard lines; penalty.

(a) As used in this Code section, the term "guard lines" means the lines established pursuant to Code Section 49-4A-15.

(b) It shall be unlawful for any person to cause to be introduced across guard lines or to come inside such guard lines with:

(1) A gun, pistol, knife, or any other weapon or a bullet, ammunition, or explosive device; or

(2) Any intoxicating liquor, amphetamines, marijuana, or any other hallucinogenic or other drugs.

(c) The provisions of this Code section shall not apply when the commissioner or director of the juvenile detention center or youth development center has provided authorization for the introduction of the items listed in subsection (b) of this Code section into such center.

(d) Any person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than four years. (Code 1981, § 49-4A-16, enacted by Ga. L. 2012, p. 1339, § 2/SB 366.)

Effective date. — This Code section became effective July 1, 2012. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1339,

§ 3/SB 366, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses committed on or after July 1, 2012.

49-4A-17. Introduction of certain items into juvenile detention center or youth development center prohibited; commerce with incarcerated youth.

(a)(1) Without the knowledge and consent of the commissioner or the director in charge of any juvenile detention center or youth develop-

ment center, it shall be unlawful for any person to take into or cause to be introduced into such center any item which such person has been directed not to take into such center:

(A) Verbally by a staff member of such center;

(B) In writing by a staff member of such center; or

(C) As directed by the rules, regulations, or policies of such center.

(2) Any item taken into a center in violation of this subsection shall be deemed contraband and shall be subject to being confiscated and retained as property of the department.

(3) Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than four years.

(b) It shall be unlawful for any person to trade or traffic with, buy from, or sell any article to a youth assigned to a juvenile detention center or youth development center without the knowledge and consent of the commissioner or the director in charge of such center. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than four years. (Code 1981, § 49-4A-17, enacted by Ga. L. 2012, p. 1339, § 2/SB 366.)

Effective date. — This Code section became effective July 1, 2012. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1339,

§ 3/SB 366, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses committed on or after July 1, 2012.

49-4A-18. Prohibited possession of certain goods by youth.

(a) As used in this Code section, the term:

(1) "Director" means the commissioner or any director of a juvenile detention center or his or her designee, or any other person who is responsible for the overall management and operation of a center.

(2) "Juvenile detention center" means a regional youth detention center or youth development center operated by or on behalf of the department.

(3) "Telecommunications device" means a device, an apparatus associated with a device, or a component of a device that enables, or may be used to enable, communication with a person outside a place of incarceration, including, but not limited to, a telephone, cellular telephone, personal digital assistant, transmitting radio, or computer connected or capable of being connected to a computer network, by

wireless or other technology, or otherwise capable of communicating with a person or device outside of a place of incarceration.

(4) “Youth” means an offender assigned to a juvenile detention center.

(b) Without the authorization of the director, it shall be unlawful for any person to obtain for, to procure for, or to give to a youth a gun, pistol, knife, or any other weapon; a bullet, ammunition, or any other explosive device; tobacco products; intoxicating liquor; marijuana, amphetamines, or any other hallucinogenic drugs or other drugs, regardless of the amount; any telecommunications device; or any other article or item.

(c) Without the authorization of the director, it shall be unlawful for a youth to possess a gun, pistol, knife, or any other weapon; a bullet, ammunition, or any other explosive device; tobacco products; intoxicating liquor; marijuana, amphetamines, or any other hallucinogenic drugs or other drugs, regardless of the amount; any telecommunications device; or any other article or item.

(d) Any person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than four years. (Code 1981, § 49-4A-18, enacted by Ga. L. 2012, p. 1339, § 2/SB 366.)

Effective date. — This Code section became effective July 1, 2012. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1339,

§ 3/SB 366, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses committed on or after July 1, 2012.

CHAPTER 5

PROGRAMS AND PROTECTION FOR CHILDREN AND YOUTH

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Sec.

Sec.

- 49-5-132. Governor's Office for Children and Families established; funding; duties and responsibilities.

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- 49-5-183.1. (Effective January 1, 2013.

See note.) Notice to alleged child abuser of classification; procedures; notification to division; children under 14 years of age not required to testify.

Article 10**Children and Adolescents with Severe Emotional Problems**

- 49-5-220. Legislative findings and intent; State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.
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Article 13**PeachCare for Kids**

- 49-5-273. Creation of PeachCare; availability; eligibility; payment of premiums; enrollment; authorization to obtain income eligibility verification from the Department of Revenue.

ARTICLE 1**CHILDREN AND YOUTH SERVICES****49-5-3. Definitions.****JUDICIAL DECISIONS**

Authority to determine physical placement of children. — Trial court erred in ordering the Department of Family and Children's Services (DFACS) to remove a foster child from the care of the child's foster parent because the order improperly infringed upon the authority of DFACS to determine the physical placement of children within the department's

custody; DFACS had legal custody of the child since the child was born, and DFACS, as legal custodian, stood in loco parentis and had all legal rights of a natural parent, including the benefit of a prima facie right to custody. In re Goudeau, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

49-5-6. Merit system to conform to federal standards; power to employ and contract for professional services; employment and dismissal procedures; membership in state retirement system.

(a) The department shall conform to federal standards for a merit system of personnel administration in the respects necessary for receiving federal grants and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(b) The department is authorized to employ, on a full or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(c) Superintendents of training schools and other facilities and institutions now or hereafter under the jurisdiction and control of the department shall be employed and dismissed for cause by the board on the recommendation of the commissioner. Professional personnel and other employees of such training schools, facilities, and institutions shall be employed and dismissed for cause by the commissioner on the recommendation of the superintendent. All other professional personnel and all other employees of the department under this article shall be employed and dismissed for cause by the commissioner in accordance with such rules and regulations as may be promulgated by the board in regard thereto. Employees of the department under this article shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(d) All personnel of the Division of Family and Children Services are authorized to be members of the Employees' Retirement System of Georgia, Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this article to the division, or otherwise had by persons at the time of employment with the division, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the division. (Ga. L. 1963, p. 81, § 8; Ga. L. 1992, p. 1983, § 26; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-98/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" at the end of subsection (c).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not

codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

49-5-12. Licensing and inspection of child welfare agencies; standards; revocation or refusal of license; penalties; violations.

(a) As used in this Code section, the term "child welfare agency" means any child-caring institution, child-placing agency, children's transition care center, or maternity home.

(b) All child welfare agencies, as defined in subsection (a) of this Code section, shall be licensed or commissioned annually by the department in accordance with procedures, standards, rules, and regulations to be established by the board. The board shall develop and publish in print or electronically rules and regulations for licensing or commissioning of child welfare agencies. Child welfare agencies electing to be commissioned rather than licensed shall operate in accordance with the same procedures, standards, rules, and regulations for licensing of child welfare agencies. A license issued to a child-placing agency shall be deemed approval of all foster family homes approved, supervised, and used by the licensed child-placing agency as a part of its work, subject to this article and rules and regulations of the board.

(c) The department shall assist applicants or licensees or persons holding commissions in meeting rules and regulations of the department for child welfare agencies and, if a licensee or person holding a commission is, for any reason, denied renewal of a license or commission or if a license or commission is revoked or if any applicant for a license or commission cannot meet department rules and regulations for child welfare agencies, the department shall assist in planning the placement of children, if any, in the custody of such child welfare agency in some other licensed or commissioned child welfare agency or assist in returning them to their own homes or in making any other plans or provisions as may be necessary and advisable to meet the particular needs of the children involved.

(d) Application for a license or commission shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license or commission and upon presentation by the applicant of evidence that the child welfare agency meets the rules and regulations prescribed by the department, the department shall issue such child welfare agency a license or commission for no more than one year.

(e) If the department finds that any child welfare agency applicant does not meet rules and regulations prescribed by the department but is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license or commission to such child welfare agency, but such temporary license or commission shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such agency is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license or commission for one additional period not to exceed one year. As an alternative to a temporary license or commission, the department, in its discretion, may issue a restricted license or commission which states the restrictions on its face.

(f) The department shall refuse a license or commission upon a showing of:

(1) Noncompliance with the rules and regulations for child welfare agencies as adopted by the Board of Human Services which are designated in writing to the facilities as being related to children's health and safety;

(2) Flagrant and continued operation of an unlicensed or uncommissioned facility in contravention of the law; or

(3) Prior license or commission denial or revocation within one year of application.

(g) All licensed or commissioned child welfare agencies shall prominently display the license or commission issued to such agency by the department at some point near the entrance of the premises of such agency that is open to view by the public.

(h) The department's action revoking or refusing to renew or issue a license or commission required by this Code section shall be preceded by notice and opportunity for a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that only 30 days' notice in writing from the commissioner's designee shall be required prior to license or commission revocation and except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(i) Child-caring institutions and child-placing agencies, when licensed in accordance with this Code section, may receive needy or dependent children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care.

Parents, guardians, custodians, or persons serving in loco parentis to such children may sign releases or agreements giving to such institutions or agencies custody and control over such children during the period of care. Children's transition care centers may receive medically fragile children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care to facilitate transitions from a hospital or other facility to a home or other appropriate setting.

(i.1) A children's transition care center shall serve no more than six children per residence or 16 children per campus at a time. Children's transition care center services shall be available to all families in this state, including those whose care is paid for through the Department of Community Health or the Department of Human Services or by insurance companies that cover home health care services or private duty nursing care in the home. Each children's transition care center location shall be physically separate and apart from any other facility licensed by the Department of Human Services under this chapter and shall provide one or more of the following services: respite care, registered nursing or licensed practical nursing care, transitional care for the facilitation of transitions to a home or other appropriate setting and reunion of families, medical day care, weekend camps, and diagnostic studies typically done in the home setting.

(j) Child-placing agencies, in placing children in foster family homes, shall safeguard the welfare of such children by thoroughly investigating each such home and the character and reputation of the persons residing therein and shall adequately supervise each home during the period of care. All children placed in foster family homes shall, as far as is practicable, be placed with persons of the same religious faith as the children themselves or the children's parents.

(k) It shall be the duty of the department to inspect at regular intervals all licensed or commissioned child welfare agencies within the state, including foster family homes used by such child-placing agencies. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the licensee or commissionee.

(l) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any child welfare agency or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require.

(m) If abuses, derelictions, or deficiencies are found in the operation and management of any child welfare agency, they shall be brought immediately to the attention of the management of such agency; and if

correctable, but not corrected within a reasonable time, the department shall revoke the license or commission of such agency in the manner prescribed in this Code section.

(n) The department may require periodic reports from child welfare agencies in such forms and at such times as the department may prescribe.

(o) Child welfare agencies and other facilities and institutions wherein children and youths are detained which are operated by any department or agency of state, county, or municipal government shall not be subject to licensure under this Code section, but the department may, through its authorized agents, make periodic inspections of such agencies, facilities, and institutions. Reports of such inspections shall be made privately to the proper authorities in charge of such agencies, facilities, or institutions. The department shall cooperate with such authorities in the development of standards that will adequately protect the health and well-being of all children and youths detained in such agencies, facilities, and institutions or provided care by them. The department may recommend changes in programs and policies and if, within a reasonable time, the standards established by the department and the recommendations of the department are not met, it shall be the duty of the commissioner to make public in the community in which such agency, facility, or institution is located the report of the above-mentioned inspection and the changes recommended by the department. If any serious abuses, derelictions, or deficiencies are found and are not corrected within a reasonable time, the commissioner shall report them in writing to the Governor.

(p) Any child welfare agency that shall operate without a license or commission issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00 for each such offense. Each day of operation without a license or commission shall constitute a separate offense.

(q) No person, official, agency, hospital, maternity home, or institution, public or private, in this state shall receive or accept a child under 17 years of age for placement or adoption or place such a child, either temporarily or permanently, in a home other than the home of the child's relatives without having been licensed or commissioned by the department. Notwithstanding the provisions of Code Section 49-5-12.1, violation of this subsection shall be punishable by a fine of not less than \$100.00 nor exceeding \$500.00 for each offense. Nothing in this Code section shall be construed to prohibit a properly licensed attorney at law from providing necessary legal services and counsel to parties engaged in or contemplating adoption proceedings. Nothing in this Code section shall be construed to prohibit an individual seeking to:

(1) Adopt a child or children from receiving or accepting a child or children in the individual's home in anticipation of filing a petition for adoption under Article 1 of Chapter 8 of Title 19; or

(2) Have that individual's child or children placed for adoption from placing that individual's child or children in the home of an individual who is not related to the child or children in anticipation of the individual's initiation of adoption proceedings pursuant to Article 1 of Chapter 8 of Title 19.

(r) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of a child welfare agency without a license or commission or the continued operation of a child welfare agency in willful violation of this article or of any regulation of the department or in violation of any order of the board.

(s) The term "licensed child welfare agency" shall include a commissioned child welfare agency and any references in this Code to a licensed child welfare agency, including criminal, administrative, and civil provisions applicable to licensed child welfare agencies, shall include and apply to commissioned child welfare agencies unless otherwise provided in this article.

(t) The department shall recommend in writing to the owner of any facility operated as a day-care center, family day-care home, group day-care facility, or group day-care home or any child learning center licensed by the Department of Early Care and Learning that such facility carry liability insurance coverage sufficient to protect the facility's clients. Any such facility which after receiving such recommendation is not covered by liability insurance shall post that fact in a conspicuous place in the facility and shall notify the parent or guardian of each child under the care of the facility in writing. Such notice shall be in at least 1/2 inch letters. Each such parent or guardian must acknowledge receipt of such notice in writing and a copy of such acknowledgment shall be maintained on file at the facility at all times while the child attends the facility and for 12 months after the child's last date of attendance. Failure to do so may subject the owner of the facility to a civil fine of \$1,000.00 for each such infraction. (Ga. L. 1963, p. 81, §§ 3, 14; Ga. L. 1967, p. 772, § 1; Ga. L. 1973, p. 560, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1982, p. 706, §§ 1, 3, 9, 10; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1986, p. 1038, § 1; Ga. L. 1987, p. 1435, §§ 3, 4; Ga. L. 1988, p. 217, § 1; Ga. L. 1989, p. 1795, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1991, p. 408, §§ 2-4; Ga. L. 1991, p. 1640, § 13; Ga. L. 1992, p. 6, § 49; Ga. L. 1994, p. 97, § 49; Ga. L. 1994, p. 650, § 4; Ga. L. 2004, p. 645, § 9; Ga. L. 2004, p. 1085, § 1; Ga. L. 2008, p. 1145, § 2/HB 984; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228; Ga. L. 2009, p. 800, § 6/HB 388; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the second sentence of subsection (b).

49-5-19. Annual report on children and youth services.

The commissioner shall prepare and publish in print or electronically an annual report on the operations of the department and of county departments of family and children services under this article and submit it to the Governor, the board, and all interested persons, officials, agencies, and groups, public or private. The report shall contain, in addition to information, statistics, and data required by other provisions of this article, a comprehensive analysis of performance of child welfare and youth services throughout the state; an analysis of goals to reduce by 1 percent each year, beginning with the fiscal year that starts October 1, 1983, the number of children who have been in family or institutional foster care for a period of 24 months or longer, as provided by Public Law 96-272; and such other information and recommendations of the commissioner as may be suitable. (Ga. L. 1963, p. 81, § 20; Ga. L. 1982, p. 1120, §§ 1, 2; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence.

ARTICLE 2

CHILD ABUSE AND DEPRIVATION RECORDS

49-5-40. Definitions; confidentiality of records; restricted access to records.

JUDICIAL DECISIONS

Oral allegation of child abuse to Department of Family and Children Services was publication for purposes of slander claim. — Although under O.C.G.A. § 49-5-40(b), reports made to the Department of Family and Children Services (DFACS) are confidential, the law of defamation requires only that the statement be disseminated to any person other than the person slandered. Therefore, a landlord’s oral allegations to a DFACS employee that a tenant committed child abuse amounted to “publication”

for purposes of O.C.G.A. § 51-5-4. *Brown v. Rader*, 299 Ga. App. 606, 683 S.E.2d 16 (2009).

Criminal defendant not entitled to MySpace.com and school records. — Trial court did not abuse the court’s discretion in denying the defendant access to the incest victim’s MySpace.com and school records because the defendant failed to show both the materiality and the favorable nature of the evidence sought. *Stephens v. State*, 305 Ga. App. 339, 699 S.E.2d 558 (2010).

49-5-41. Persons and agencies permitted access to records.

(a) Notwithstanding Code Section 49-5-40, the following persons or agencies shall have reasonable access to such records concerning reports of child abuse:

(1) Any federal, state, or local governmental entity, or any agency of any such entity, that has a need for information contained in such reports in order to carry out its legal responsibilities to protect children from abuse and neglect;

(2) A court, by subpoena, upon its finding that access to such records may be necessary for determination of an issue before such court; provided, however, that the court shall examine such record in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then before it and the record is otherwise admissible under the rules of evidence;

(3) A grand jury by subpoena upon its determination that access to such records is necessary in the conduct of its official business;

(4) The district attorney of any judicial circuit in this state, a solicitor-general, or any assistant district attorney or assistant solicitor-general who may seek such access in connection with official duty;

(5) Any adult who makes a report of suspected child abuse as required by Code Section 19-7-5, but such access shall include only notification regarding the child concerning whom the report was made, shall disclose only whether the investigation by the department or governmental child protective agency of the reported abuse is ongoing or completed and, if completed, whether child abuse was confirmed or unconfirmed, and shall only be disclosed if requested by the person making the report;

(6) Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality, unless such disclosure of information would jeopardize a criminal investigation or proceeding, but such access shall be limited to a disclosure of the available facts and findings. Any identifying information, including but not limited to the child or caretaker's name, race, ethnicity, address, or telephone numbers and any other information that is privileged or confidential, shall be redacted to preserve the confidentiality of the child, other children in the household, and the child's parents, guardians, custodians, or caretakers.

(7) The State Personnel Board, by administrative subpoena, upon a finding by an administrative law judge appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for a determination of an issue involving departmental personnel and that issue involves the conduct of such personnel in child related employment activities, provided that only those parts of the record relevant to the child related employment activities shall be disclosed. The name of any complainant or client shall not be identified or entered into the record;

(7.1) A child advocacy center which is certified by the Child Abuse Protocol Committee of the county where the principal office of the center is located as participating in the Georgia Network of Children's Advocacy Centers or a similar accreditation organization and which is operated for the purpose of investigation of known or suspected child abuse and treatment of a child or a family which is the subject of a report of abuse, and which has been created and supported through one or more intracommunity compacts between such advocacy center and one or more police agencies, the office of the district attorney, a legally mandated public or private child protective agency, a mental health board, and a community health service board; provided, however, that any child advocacy center which is granted access to records concerning reports of child abuse shall be subject to the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting unauthorized access to or use of such records;

(8) Police or any other law enforcement agency of this state or any other state or any medical examiner or coroner investigating a report of known or suspected abuse or any child fatality review panel or child abuse protocol committee or subcommittee thereof created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that the disclosure of such information is necessary in order for such entities to carry out their legal responsibilities to protect children from abuse and neglect, which protective actions include bringing criminal actions for such abuse or neglect, and that such disclosure is therefore permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); and

(9) The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the House of Representatives when such officer makes a written request to the commissioner of the department which specifies the name of the child for which such access is sought and which describes such officer's need to have access to such records

in order to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether such laws need to be changed to enhance such protection, for which purposes the General Assembly finds such disclosure is permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4).

(b)(1) Notwithstanding Code Section 49-5-40, the juvenile court in the county in which are located any department or county board records concerning reports of child abuse, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this subsection. When those records are located in more than one county, the application may be made to the juvenile court of any one such county. A copy of any application authorized by this subsection shall be served on the nearest office of the department. In cases where the location of the records is unknown to the applicant, the application may be made to the Juvenile Court of Fulton County.

(2) The juvenile court to which an application is made pursuant to paragraph (1) of this subsection shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse or treating a child or family which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

(3) Notwithstanding the provisions of this subsection, access to the child abuse registry created pursuant to Article 8 of this chapter shall not be permitted except as allowed by Article 8 of this chapter.

(c) The department or a county or other state or local agency may permit access to records concerning reports of child abuse and may

release information from such records to the following persons or agencies when deemed appropriate by such department:

(1) A physician who has before him a child whom he reasonably suspects may be abused;

(2) A licensed child-placing agency, a licensed child-caring institution of this state which is assisting the Department of Human Services by locating or providing foster or adoptive homes for children in the custody of the department, or an investigator appointed by a court of competent jurisdiction of this state to investigate a pending petition for adoption;

(3) A person legally authorized to place a child in protective custody when such person has before him a child he reasonably suspects may be abused and such person requires the information in the record or report in order to determine whether to place the child in protective custody;

(4) An agency or person having the legal custody, responsibility, or authorization to care for, treat, or supervise the child who is the subject of a report or record;

(5) An agency, facility, or person having responsibility or authorization to assist in making a judicial determination for the child who is the subject of the report or record of child abuse, including but not limited to members of officially recognized citizen review panels, court appointed guardians ad litem, certified Court Appointed Special Advocate (CASA) volunteers who are appointed by a judge of a juvenile court to act as advocates for the best interest of a child in a juvenile proceeding, and members of a county child abuse protocol committee or task force;

(6) A legally mandated public child protective agency or law enforcement agency of another state bound by similar confidentiality provisions and requirements when, during or following the department's investigation of a report of child abuse, the alleged abuser has left this state;

(7) A child welfare agency, as defined in Code Section 49-5-12, or a school where the department has investigated allegations of child abuse made against any employee of such agency or school and any child remains at risk from exposure to that employee, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(8) An employee of a school or employee of a child welfare agency, as defined in Code Section 49-5-12, against whom allegations of child abuse have been made, when the department has been unable to determine the extent of the employee's involvement in alleged child abuse against any child in the care of that school or agency. In those instances, upon receiving a request and signed release from the employee, the department may report its findings to the employer, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(9) Any person who has an ongoing relationship with the child named in the record or report of child abuse any part of which is to be disclosed to such person but only if that person is required to report suspected abuse of that child pursuant to subsection (b) of Code Section 19-7-5, as that subsection existed on January 1, 1990;

(10) Any school principal or any school guidance counselor, school social worker, or school psychologist who is certified under Chapter 2 of Title 20 and who is counseling a student as a part of such counseling person's school employment duties, but those records shall remain confidential and information obtained therefrom by that counseling person may not be disclosed to any person, except that student, not authorized under this Code section to obtain those records, and such unauthorized disclosure shall be punishable as a misdemeanor;

(11) The Department of Early Care and Learning or the Department of Education; or

(12) An individual, at the time such individual is leaving foster care by reason of having attained the age of majority, but such access shall be limited to providing such individual with a free copy of his or her health and education records, including the most recent information available.

(d) Notwithstanding any other provision of law, any child-caring agency, child-placing agency, or identified foster parent shall have reasonable access to nonidentifying information from the placement or child protective services record compiled by any state department or agency having custody of a child with respect to any child who has been placed in the care or custody of such agency or foster parent or for whom foster care is being sought, excluding all documents obtained from outside sources which cannot be redisclosed under state or federal law. A department or agency shall respond to a request for access to a child's

record within 14 days of receipt of such written request. Any child-caring agency, child-placing agency, or identified foster parent who is granted access to a child's record shall be subject to the penalties imposed by Code Section 49-5-44 for unauthorized access to or use of such records. Such record shall include reports of abuse of such child and the social history of the child and the child's family, the medical history of such child, including psychological or psychiatric evaluations, or educational records as allowed by state or federal law and any plan of care or placement plan developed by the department, provided that no identifying information is disclosed regarding such child.

(e) Notwithstanding any other provisions of law, with the exception of medical and mental health records made confidential by other provisions of law, child abuse and deprivation records applicable to a child who at the time of his or her fatality or near fatality was:

- (1) In the custody of a state department or agency or foster parent;
- (2) A child as defined in paragraph (3) of Code Section 15-11-171;
or
- (3) The subject of an investigation, report, referral, or complaint under Code Section 15-11-173

shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records; provided, however, that any identifying information, including but not limited to the child or caretaker's name, race, ethnicity, address, or telephone numbers and any other information that is privileged or confidential, shall be redacted to preserve the confidentiality of the child, other children in the household, and the child's parents, guardians, custodians, or caretakers. Upon the release of documents pursuant to this subsection, the department may comment publicly on the case. (Ga. L. 1975, p. 1135, § 2; Ga. L. 1990, p. 1778, § 2; Ga. L. 1991, p. 1320, §§ 1-3; Ga. L. 1993, p. 979, § 2; Ga. L. 1993, p. 1712, § 2; Ga. L. 1994, p. 967, §§ 1, 2; Ga. L. 1996, p. 1143, § 1; Ga. L. 1997, p. 844, § 4; Ga. L. 1998, p. 609, § 5; Ga. L. 2000, p. 243, § 3; Ga. L. 2001, p. 4, § 49; Ga. L. 2002, p. 861, § 1; Ga. L. 2003, p. 497, § 1; Ga. L. 2004, p. 645, § 16; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2007, p. 478, § 8/SB 128; Ga. L. 2009, p. 43, §§ 2, 3/SB 79; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 316, § 1/HB 303.)

The 2010 amendment, effective May 20, 2010, in paragraph (a)(4), substituted "The district" for "A district" at the begin-

ning, inserted "a solicitor-general," in the middle, and inserted "or assistant solicitor-general" near the end.

JUDICIAL DECISIONS

Criminal defendant not entitled to records.

In a child molestation conviction, after defendant determined during trial that the state had not informed the defendant of an additional interview conducted by the victim's counselor, the state did not violate the Georgia Reciprocal Discovery Act, O.C.G.A. § 17-16-4(a)(3)(a), by failing to provide this material because defendant had not requested an in camera inspection of the confidential therapist's records as required by O.C.G.A. § 49-5-41. *Waters v. State*, 303 Ga. App. 187, 692 S.E.2d 802 (2010).

Trial court did not abuse the court's discretion in denying the defendant access to the incest victim's MySpace.com and school records because the defendant

failed to show both the materiality and the favorable nature of the evidence sought. *Stephens v. State*, 305 Ga. App. 339, 699 S.E.2d 558 (2010).

Trial court did not err in failing to forward to the defendant the court's confidential file documents regarding two child molestation victims because the trial court's finding that the files contained no exculpatory evidence was alone sufficient, and the defendant made no showing that the material was exculpatory; a defendant who challenges a trial court's in camera inspection on appeal must show what information was suppressed and how that information was materially exculpatory. *Tidwell v. State*, 306 Ga. App. 307, 701 S.E.2d 920 (2010).

ARTICLE 3

EMPLOYEES' RECORDS CHECKS FOR DAY-CARE CENTERS

49-5-60. Definitions.

JUDICIAL DECISIONS

Cited in *Coleman v. State*, 308 Ga. App. 731, 708 S.E.2d 638 (2011).

ARTICLE 6

PROGRAMS AND PROTECTION FOR CHILDREN

PART 1

GOVERNOR'S OFFICE FOR CHILDREN AND FAMILIES

49-5-132. Governor's Office for Children and Families established; funding; duties and responsibilities.

(a) There is established the Governor's Office for Children and Families which shall be assigned to the Governor's Office of Planning and Budget for administrative purposes.

(b) The office shall be the successor entity to the Children and Youth Coordinating Council and to the Children's Trust Fund Commission and shall assume the continuing responsibilities, duties, rights, staff, contracts, debts, liabilities, and authorities of those bodies, any law to the contrary notwithstanding.

(c) The office may accept federal funds granted by Congress or executive order for the purposes of the fund as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. All funds received in the manner described in this Code section shall be transmitted to the state treasurer for deposit in the fund to be disbursed as other moneys in such fund.

(d) The office is further vested with authority to carry out the following duties and responsibilities in consultation with the board:

(1) To carry out the prevention and community based service programs as provided for in Part 2 of this article;

(2) To carry out the duties relating to mentoring as provided for in Part 3 of this article;

(3) To cooperate with and secure cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this article;

(4) To prepare, publish in print or electronically, and disseminate fundamental child related information of a descriptive and analytical nature to all components of the children's service system of this state, including, but not limited to, the juvenile justice system;

(5) To serve as a state-wide clearing-house for child related information and research;

(6) In coordination and cooperation with all components of the children's service systems of this state, to develop legislative proposals and executive policy proposals reflective of the priorities of the entire child related systems of this state, including, but not limited to, child abuse injury prevention, treatment, and juvenile justice systems;

(7) To serve in an advisory capacity to the Governor on issues impacting the children's service systems of this state;

(8) To coordinate high visibility child related research projects and studies with a state-wide impact when those studies and projects cross traditional system component lines;

(9) To provide for the interaction, communication, and coordination of all components of the children's service systems of this state and to provide assistance in establishing state-wide goals and standards in the system;

(10) To provide for the effective coordination and communication between providers of children and youth services, including pediat-

rics, health; mental health, business and industry, and all components of social services, education, and educational services;

(11) To encourage and facilitate the establishment of local commissions or coalitions on children and youth and to facilitate the involvement of communities in providing services for their children and youth;

(12) To review and develop an integrated state plan for services provided to children and youth in this state through state programs;

(13) To provide technical assistance and consultation to members of the council and local governments, particularly those involved in providing services to their children and youth;

(14) To facilitate elimination of unnecessary or duplicative efforts, programs, and services; and

(15) To do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it. (Code 1981, § 49-5-132, enacted by Ga. L. 2008, p. 568, § 9/HB 1054; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendments. — The first 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in paragraph (d)(4). The second 2010 amend-

ment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the last sentence of subsection (c).

ARTICLE 7

REGISTRATION OF ORGANIZATIONS PROVIDING SERVICES TO RUNAWAY AND HOMELESS YOUTH

Effective date. — This article became effective July 1, 2011.

Editor’s notes. — This article, consisting of Code Sections 49-5-160 through 49-5-164, formerly pertained to the commission on children and youth. The former article was based on Ga. L. 1964, p.

499, § 1, and Ga. L. 1985, p. 149, § 31, and was repealed by Ga. L. 1991, p. 435, § 19, effective July 1, 1991.

Ga. L. 2011, p. 470, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Runaway Youth Safety Act.’”

49-5-160. Definitions; qualifications.

As used in this article, the term:

(1) “Licensed” means an individual who has been licensed pursuant to Chapter 10A, 26, 34, or 39 of Title 43.

(2) “Organization” means a nonprofit charitable organization which is exempt from taxation under the provisions of Section 501(c)(3) of the United States Internal Revenue Code, which:

(A) Serves children who have run away or children who are homeless;

(B) Has qualified staff on duty at all hours the organization is open for service; and

(C) Employs at least one individual who is licensed pursuant to Chapter 10A, 26, 34, or 39 of Title 43.

(3) "Qualified staff" means having:

(A) All staff who directly interact with children receive training on emergency evacuation procedures, service protocols, and the mandatory child abuse reporting requirements set forth in Code Section 19-7-5; and

(B) All staff have had a criminal record check conducted in accordance with Article 5 of this chapter. (Code 1981, § 49-5-160, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-161. Registration and form required; fee; issuance of certificate.

(a) On and after July 1, 2011, all organizations shall register under this Code section by submitting a form to the department, upon forms furnished by the department. The form shall require the name, address, and telephone number of the organization and emergency contact information.

(b) A registrant shall be required to pay an annual registration fee of \$25.00.

(c) Upon receipt of an application for registration, payment of the registration fees, and presentation by the applicant of evidence that the organization meets the qualifications prescribed by Code Section 49-4-162, the department shall issue such organization a registration certificate valid for one year. (Code 1981, § 49-5-161, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-162. Policies; qualified staff; proof of liability coverage.

(a) The department shall require organizations to have reasonable:

(1) Written policies and procedures for admission, intake, and record keeping;

(2) Written policies regarding treatment and referrals for mental, physical, and emotional health;

(3) Written policies for reports of actual or alleged injuries at an organization's premises; and

(4) Proof of having qualified staff.

(b) The department shall require that organizations:

(1) Photograph all minors considered for admission by the organization;

(2) Have proof of liability insurance coverage sufficient to protect the clients of the organization's facility; and

(3) Provide a copy of its registration to the sheriff of the county in which the organization operates a facility, and the sheriff shall distribute such registration to all appropriate law enforcement agencies within the county. (Code 1981, § 49-5-162, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-163. Display of registration; inspection of facilities; investigation.

(a) A registered organization shall prominently display its registration at some location near the entrance of the premises of such organization that is open to view by the public.

(b) The department shall be given the right to periodically inspect the facilities of registered organizations. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the organization.

(c) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any organization or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require. (Code 1981, § 49-5-163, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-164. Registered organization not exempt.

Nothing in this article shall be construed to exempt a registered organization from the requirements of Code Section 49-5-12 for minors who are present with a service provider longer than 72 hours after the minor has accepted services. (Code 1981, § 49-5-164, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

ARTICLE 8

CENTRAL CHILD ABUSE REGISTRY

49-5-181. Establishment of central registry.

RESEARCH REFERENCES

ALR. — Constitutional challenges to state child abuse registries, 36 ALR6th 475.

49-5-183.1. (Effective January 1, 2013. See note.) Notice to alleged child abuser of classification; procedures; notification to division; children under 14 years of age not required to testify.

(a) If a DFACS office, pursuant to Code Section 49-5-183, receives an abuse investigator's report naming a person as having committed an act of child abuse classified as "confirmed" or "unconfirmed" in the report and such person was at least 13 years of age at the time of the commission of such act, the person so named shall be deemed to be an alleged child abuser for purposes of this article.

(b) When a DFACS office receives an investigator's report pursuant to subsection (a) of this Code section naming an alleged child abuser, that office shall mail to each alleged child abuser so classified in such report a notice regarding such classification. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the current address of the alleged child abuser and proper postage affixed. The notice of classification shall further inform such alleged child abuser of such person's right to a hearing to appeal such classification. The notice of classification shall further inform such alleged child abuser of the procedures for obtaining the hearing, and that an opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved.

(c) Any alleged child abuser who has not attained the age of majority set forth by Code Section 39-1-1 at the time of the hearing requested pursuant to subsection (e) of this Code section who is alleged to have committed an act of child abuse shall be entitled to representation at the hearing either by the alleged child abuser's parent or other legal guardian or by an attorney employed by such parent or guardian. In the event the administrative law judge conducting the hearing determines that any such alleged minor child abuser will not be so represented at the hearing, or that the interests of any such alleged minor child abuser may conflict with the interests of the alleged minor child abuser's parent or other legal guardian, the administrative law judge shall order the DFACS office which transmitted the hearing request to apply to the superior court of the county in which such DFACS office is located to have counsel appointed for the alleged minor child abuser. Payment for any such court appointed representation shall be made by the county in which such DFACS office is located.

(d) In order to exercise such right to a hearing, the alleged child abuser must file a written request for a hearing with the DFACS office which mailed the notice of classification within ten days after receipt of such notice. The written request shall contain the alleged child abuser's

current residence address and, if the person has a telephone, a telephone number at which such person may be notified of the hearing.

(e) A DFACS office which receives a timely written request for a hearing under subsection (d) of this Code section shall transmit that request to the Office of State Administrative Hearings within ten days after such receipt. Notwithstanding any other provision of law, the Office of State Administrative Hearings shall conduct a hearing upon that request in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules of the Office of State Administrative Hearings adopted pursuant thereto, except as otherwise provided in this article. The hearing shall be for the purpose of an administrative determination regarding whether there was sufficient credible evidence of child abuse by the alleged child abuser to justify the investigator's classification of such abuse as "confirmed" or "unconfirmed." The Office of State Administrative Hearings shall give notice of the time and place of the hearing to the alleged child abuser by first-class mail to the address specified in the written request for a hearing and to the DFACS office by first-class mail at least ten days prior to the date of the hearing. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the correct address of the alleged child abuser and the DFACS office, respectively, and proper postage affixed. Unless postponed by mutual consent of the parties and the administrative law judge or for good cause shown, that hearing shall be held within 30 business days following receipt by the Office of State Administrative Hearings of the request for a hearing, and a decision shall be rendered within five business days following such hearing. A motion for an expedited hearing may be filed in accordance with rules and regulations promulgated by the Office of State Administrative Hearings. The hearing may be continued as necessary to allow the appointment of counsel. A telephone hearing may be conducted concerning this matter in accordance with standards prescribed in paragraph (5) of Code Section 50-13-15. Upon the request of any party to the proceeding or the assigned administrative law judge, venue may be transferred to any location within the state if all parties and the administrative law judge consent to such a change of venue. Otherwise, the hearing shall be conducted in the county of the DFACS office which transmitted the hearing request to the Office of State Administrative Hearings. The doctrines of collateral estoppel and res judicata as applied in judicial proceedings are applicable to the administrative hearings held pursuant to this article.

(f) At the conclusion of the hearing under subsection (e) of this Code section, the administrative law judge shall order that the alleged child abuser's name not be included in the abuse registry upon a finding that there is no credible evidence that such individual committed the child

abuse alleged; otherwise, the administrative law judge shall order listing of the alleged child abuser's name on the abuse registry as confirmed if there is equal or greater credible evidence that such individual committed the child abuse alleged than such individual did not commit the child abuse alleged or as unconfirmed if there is some credible evidence that the alleged child abuser committed the alleged child abuse but not enough credible evidence to classify the individual as confirmed. The general public shall be excluded from hearings of the Office of State Administrative Hearings held pursuant to this article and the files and records relating thereto shall be confidential and not subject to public inspection.

(g) Notwithstanding any other provision of law, the decision of the administrative law judge under subsection (f) of this Code section shall constitute the final administrative decision. Any party shall have the right of judicial review of such decision in accordance with Chapter 13 of Title 50, except that the petition for review shall be filed within ten days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be substantially the same as those for judicial review of contested cases under Code Section 50-13-19 except that the filing of a petition for judicial review stays the listing of the petitioner's name upon the abuse registry and the superior court shall conduct the review and render its decision thereon within 30 days following the filing of the petition. The review and records thereof shall be closed to the public and not subject to public inspection. The decision of the superior court under this subsection shall not be subject to further appeal or review.

(h) The DFACS office which notifies a person of that person's classification as an alleged child abuser and of that person's right to a hearing regarding that classification shall transmit to the division the investigator's report so naming such person unless that office receives a written request for such hearing within the time for making such request under subsection (d) of this Code section. If a timely request for hearing is received, the administrative law judge shall transmit to the division his or her decision regarding the classification of the alleged child abuser and the investigator's report regarding such individual within ten days following that decision unless a petition for judicial review of that decision is filed within the permitted time period. If a timely petition for judicial review is filed within the permitted time period, the superior court shall transmit to the division its decision regarding the classification of the alleged child abuser and the investigator's report regarding such individual within ten days following that decision.

(i) (Effective January 1, 2013. See note.) No child under the age of 14 shall be compelled to appear to testify at any hearing held pursuant to

this Code section. If a child under the age of 14 testifies voluntarily, such testimony shall be given in compliance with procedures analogous to those contained in Code Section 17-8-55. Nothing in this article shall prohibit introducing a child's statement in a hearing held pursuant to this Code section if the statement meets the criteria of Code Section 24-8-820. (Code 1981, § 49-5-183.1, enacted by Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, § 3; Ga. L. 1998, p. 128, § 49; Ga. L. 2011, p. 99, § 93/HB 24.)

Delayed effective date. — This Code section, as set forth above, is effective on January 1, 2013. For the version of this Code section effective until that date, see the bound volume.

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-8-820" for "Code Section 24-3-16" at the end of the last sentence of subsection (i). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99,

§ 101, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

RESEARCH REFERENCES

ALR. — Constitutional challenges to state child abuse registries, 36 ALR6th 475.

ARTICLE 10

CHILDREN AND ADOLESCENTS WITH SEVERE EMOTIONAL PROBLEMS

49-5-220. Legislative findings and intent; State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.

(a) The General Assembly declares its intention and desire to:

- (1) Ensure a comprehensive mental health program consisting of early identification, prevention, and early intervention for every child in Georgia;
- (2) Preserve the sanctity of the family unit;
- (3) Prevent the unnecessary removal of children and adolescents with a severe emotional disturbance from their homes;
- (4) Prevent the unnecessary placement of these children out of state;
- (5) Bring those children home who through use of public funds are inappropriately placed out of state; and

(6) Develop a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, nonresidential and residential mental health services, and support services, as prescribed in an individualized plan.

(b) In recognition of the fact that services to these children are provided by several different agencies, each having a different philosophy, a different mandate, and a different source of funding, the General Assembly intends that the Department of Behavioral Health and Developmental Disabilities shall have the primary responsibility for planning, developing, and implementing the coordinated system of care for severely emotionally disturbed children. Further, it recognizes that to enable severely emotionally disturbed children to develop appropriate behaviors and demonstrate academic and vocational skills, it is necessary that the Department of Education provide appropriate education in accordance with P.L. 94-142 and that the Department of Behavioral Health and Developmental Disabilities provide mental health treatment.

(c) Further, in recognition that only a portion of the children needing services are receiving them and in recognition that not all the services that comprise a coordinated system of care are currently in existence or do not exist in adequate numbers, the General Assembly intends that the Department of Behavioral Health and Developmental Disabilities and the Department of Education jointly develop and implement a State Plan for the Coordinated System of Care for severely or emotionally disturbed children or adolescents as defined in paragraph (10) of Code Section 49-5-221.

(d) The commissioner of behavioral health and developmental disabilities and the State School Superintendent shall be responsible for the development and implementation of the state plan.

(e) The commissioner of behavioral health and developmental disabilities shall be responsible for preparing this jointly developed state plan for print or electronic publication and dissemination. The commissioner of behavioral health and developmental disabilities shall also be responsible for preparing for print or electronic publication and dissemination the annual report.

(f) The receipt of services under this article is not intended to be conditioned upon placement of a child in the legal custody, protective supervision, or protection of the Department of Human Services. (Code 1981, § 49-5-220, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 2002, p. 1324, § 1-23; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 3-26/HB 228; Ga. L. 2010, p. 838, § 11/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “print or electronic” in two places in subsection (e).

49-5-221. Definitions.

As used in this article, the term:

(1) “Annual report” means the report prepared by the commissioner of the Department of Behavioral Health and Developmental Disabilities for print or electronic publication and dissemination that includes: the jointly developed State Plan for the Coordinated System of Care; and data on state services to severely emotionally disturbed children or adolescents that are provided either directly by the Department of Behavioral Health and Developmental Disabilities, the Department of Education, or other involved state agencies, or indirectly through state funding to private agencies.

(2) “Case management” means assuring continuity of services for the child and family, coordinating of services for the child and family, coordinating the interagency assessment of the child and family’s needs, arranging for needed services, and linking various services and agencies.

(3) “Case manager” means the individual identified and assigned the responsibility of ensuring that the child and family obtain necessary services. The case manager shall ensure that evaluations and service provision from multiple agencies are coordinated; that services are based on integrated assessments and evaluations; that adequacy and appropriateness of services is reviewed through quarterly case review staffings; that prompt service delivery is facilitated; that clients are tracked; and that family involvement and input is maintained.

(4) “Coordinated system of care” means a comprehensive array of mental health and other necessary services organized into a coordinated network to meet the multiple and changing needs of severely emotionally disturbed children and adolescents.

(5) “Five-year plan” or “state plan” means the State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.

(6) “Individualized plan” means a written plan for a child or adolescent with a severe emotional disturbance, when appropriate and when eligible, that is based upon the comprehensive multidisciplinary assessment of the individual needs of the child. Such plans shall include, but not be limited to: individualized treatment plans; individualized education plans; individualized placement plans; in-

dividualized case plans; individualized family service plans; and individualized employment, service, and rehabilitation plans.

(7) “Local interagency children’s committees” means committees with multiagency representation that are established at the local level to staff cases and review decisions about appropriate treatment or placement of children or adolescents experiencing severe emotional disturbance. Existing troubled children’s committees may serve as local interagency committees.

(8) “Regional plan” means a written strategy developed by local interagency children’s committees based on the principles delineated in Code Section 49-5-222. It contains the same components as the state plan.

(9) “Reintegration plan” means an individualized plan that is designed to provide for the return of the severely emotionally disturbed child or adolescent, who has been placed out of home or out of state to his family or community.

(10) “Severely emotionally disturbed child or adolescent” or “child or adolescent with a severe emotional disturbance” means a person defined as such by the Department of Behavioral Health and Developmental Disabilities for mental health services or by the Department of Education for educational purposes. (Code 1981, § 49-5-221, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 838, § 11/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “print or electronic” in paragraph (1).

49-5-225. Local interagency committees; membership; function of committees.

(a) At least one local interagency committee shall be established for each region of the Department of Behavioral Health and Developmental Disabilities whose permanent membership shall include a local representative from each of the following:

- (1) The community mental health agency responsible for coordinating children’s services;
- (2) The Division of Family and Children Services of the Department of Human Services;
- (3) The Department of Juvenile Justice;
- (4) The Department of Public Health;
- (5) A member of the special education staff of the local education agency; and

(6) The Georgia Vocational Rehabilitation Agency.

(b) In addition to the permanent members, the local interagency committee reviewing the case of a child or adolescent may include as ad hoc members the special education administrator of the school district serving the child or adolescent, the parents of the child or adolescent, and caseworkers from any involved agencies.

(c) The local interagency committees shall:

(1) Staff cases and review and modify as needed decisions about placement of children and adolescents in out-of-home treatment or placement, monitor each child's progress, facilitate prompt return to the child's home when possible, develop a reintegration plan shortly after a child's admission to a treatment program, review the individual plan for the child or adolescent and amend the plan if necessary, and ensure that services are provided in the least restrictive setting consistent with effective services; and

(2) Be the focal point for the regional plan, if any. (Code 1981, § 49-5-225, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 1453, § 1; Ga. L. 2000, p. 1137, § 5; Ga. L. 2002, p. 1324, § 1-24; Ga. L. 2009, p. 453, § 3-27/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214; Ga. L. 2012, p. 303, § 3/HB 1146.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Division of Public Health of the Department of Community Health" in paragraph (a)(4).

The 2012 amendment, effective July 1, 2012, substituted "Georgia Vocational

Rehabilitation Agency" for "Division of Rehabilitation Services of the Department of Labor" in paragraph (a)(6).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

ARTICLE 13

PEACHCARE FOR KIDS

49-5-273. Creation of PeachCare; availability; eligibility; payment of premiums; enrollment; authorization to obtain income eligibility verification from the Department of Revenue.

(a) There is created the PeachCare for Kids Program to provide health care benefits for children in families with income below 235 percent of the federal poverty level. Children from birth through 18 years of age in families with family incomes below 235 percent of the federal poverty level and who are not eligible for medical assistance under Medicaid shall be eligible for the program, to be administered by the department pursuant to federal law and subject to availability of funding.

(b) No entitlement to benefits for the children covered under the program or this article shall be created by the program, nor shall this article or any rules or regulations adopted pursuant to this article be interpreted to entitle any person to receive any health services or insurance available under this program. The program shall be established subject to the availability of funds specifically appropriated by the General Assembly for this purpose and federal matching funds as set forth in federal law. The department shall operate the program consistent with administrative efficiency and the best interests of children.

(c) The program shall offer substantially the same health care services available to children under Georgia's Medicaid plan, but coverage for such services shall not be provided by an expansion of eligibility for medical assistance under Medicaid. However, the program shall exclude nonemergency transportation and targeted case management services. The department shall utilize appropriate medical management and utilization control procedures necessary to manage care effectively and shall prospectively limit enrollment in the program and modify the health care services benefits when the department has reason to believe the cost of such enrollment or services may exceed the availability of funding.

(d) The department may require copayments for services consistent with federal law; provided, however, that no copayment shall be charged for preventive services and no copayments or premiums shall be charged for any child under six years of age. Preventive services include but are not limited to medically necessary maintenance medication and monitoring for chronic conditions such as asthma and diabetes.

(e) The department shall require payment of premiums for participation in the program. The premiums shall not exceed the amounts permitted under Section 1916(b)(1) of the Social Security Act or federal law.

(f) The department may provide for presumptive eligibility for all applicant children as allowed by federal law and in a manner consistent with the provisions of this article.

(g) The department shall provide for outreach for the purpose of enrolling children in the program. Applications shall be accepted by mail or in person. All necessary and appropriate steps shall be taken to achieve administrative cost efficiency, reduce administrative barriers to application for and receipt of services under the program, verify eligibility for the program and enforce eligibility standards, and ensure that enrollment in the program does not substitute for coverage under a group health insurance plan.

(h) Any health care provider who is enrolled in the Medicaid program shall be deemed to be enrolled in the program.

(i) The department shall file a Title XXI plan to carry out the program with the United States Department of Health and Human Services Centers for Medicare and Medicaid Services. The department shall have the authority and flexibility to make such decisions as are necessary to secure approval of that plan consistent with this article. The department shall provide a copy of the plan to the General Assembly. The department shall operate this program consistent with federal law.

(j) The department shall publish in print or electronically an annual report, a copy of which shall be provided to the Governor, setting forth the number of participants in the program, the health services provided, the amount of money paid to providers, and other pertinent information with respect to the administration of the program. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient.

(k) All state agencies shall cooperate with the department and its designated agents by providing requested information to assist in the administration of the program.

(l) The department, through the Department of Administrative Services or any other appropriate entity, may contract for any or all of the following: the collection of premiums, processing of applications, verification of eligibility, outreach, data services, and evaluation, if such contracting achieves administrative or service cost efficiency. The department, and other state agencies as appropriate, shall provide necessary information to any entity which has contracted with the department for services related to the administration of the program upon request. For purposes of compliance with Code Section 34-8-125, a request by any entity which has contracted with the department for services related to the administration of the program shall be deemed to be a request by a responsible official of the department and considered to be a request by the department.

(m) Nothing in this article shall be interpreted in a manner so as to preclude the department from contracting with licensed health maintenance organizations (HMO) or provider sponsored health care corporations (PSHCC) for coverage of program services and eligible children; provided, however, that such contracts shall require payment of premiums and copayments in a manner consistent with this article. The department may require enrollment in a health maintenance organization (HMO) or provider sponsored health care corporation (PSHCC) as a condition of receiving coverage under the program.

(n) The Department of Education and local boards of education shall cooperate with and provide assistance to the department and its designated agents for the purposes of identifying and enrolling eligible children in the program.

(o) As necessary to enforce the provisions of this article, the department or its duly authorized agents may submit to the state revenue commissioner the names of applicants for health care benefits or payments provided under this article, as well as the relevant income threshold specified therein. If the department elects to contract with the state revenue commissioner for such purposes, the state revenue commissioner and his or her agents or employees shall notify the department whether or not each submitted applicant's income exceeds the relevant income threshold provided. The department shall pay the state revenue commissioner for all costs incurred by the Department of Revenue pursuant to this subsection. No information shall be provided by the Department of Revenue to the department without an executed cooperative agreement between the two departments. Any tax information secured from the federal government by the Department of Revenue pursuant to express provisions of Section 6103 of the Internal Revenue Code may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information under the authority of this subsection is subject to the provisions of Code Section 48-7-60 and to all penalties provided under Code Section 48-7-61 for unlawful divulging of confidential tax information. (Code 1981, § 49-5-273, enacted by Ga. L. 1998, p. 623, § 1; Ga. L. 2000, p. 472, §§ 1, 2; Ga. L. 2002, p. 415, § 49; Ga. L. 2005, p. 1036, § 41/SB 49; Ga. L. 2005, p. 1438, § 5/SB 140; Ga. L. 2009, p. 63, § 2/SB 165; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence of subsection (j).

ARTICLE 14

FOSTER PARENTS BILL OF RIGHTS

49-5-281. Bill of rights for foster parents; filing of grievance in event of violations.

Cross references. — Counting attendance for student attending court proceedings on foster care, § 20-2-692.2.

JUDICIAL DECISIONS

Statute does not grant adoption rights. — Foster parents did not have standing to pursue an adoption of a foster child that had been living happily with

the child’s grandmother for three years because the biological parents did not surrender their rights in favor of the foster parents, O.C.G.A. § 19-8-5, and the Foster Parent’s Bill of Rights, O.C.G.A. § 49-5-281, did not grant adoption rights. *Owen v. Watts*, 303 Ga. App. 867, 695 S.E.2d 62, cert. denied, U.S. , 131 S. Ct. 156, 178 L. Ed. 2d 93 (2010).

Unmarried individuals may adopt. — Trial court abused the court’s discretion by denying a foster parent’s petition to adopt the foster child on the ground that placing the child with the foster parent, who was not married to the individual with whom the foster parent lived, violated the state’s public policy because all of the evidence showed that the adoption

would be in the child’s best interest, and the trial court failed to apply the law as written and determine whether it was in the child’s best interest to allow the adoption; all of the witnesses, including the guardian ad litem the trial court appointed to represent the child’s interests and the Department of Family and Children’s Services adoption specialist, testified that the adoption was in the child’s best interest and that to remove the child from the only family the child had ever known would be devastating to the child, and O.C.G.A. § 19-8-3 clearly did not prohibit the adoption because the General Assembly did not prohibit unmarried couples from adopting. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

CHAPTER 6

SERVICES FOR THE AGING

Article 2

Council on Aging

- Sec.
49-6-21. Duties and powers of council.
49-6-21.1. Additional duties and powers of council; report and recommendations [Repealed].

Article 7

Licensure of Adult Day Center

- Sec.
49-6-84. Authority of department; promulgation of rules and regulations; authority to issue or suspend licenses.

ARTICLE 2

COUNCIL ON AGING

49-6-21. Duties and powers of council.

The Council on Aging shall serve in an advisory capacity to the Governor, the General Assembly, the board, the department, and all other state agencies in matters relating to the elderly. In particular, the council shall:

- (1) Make recommendations concerning the establishment and maintenance of an adequate program for the elderly in Georgia;
- (2) Recommend standards for services for the elderly;
- (3) Aid the department and other state agencies in coordinating programs for the elderly;

(4) Establish indices to determine the effectiveness of programs for the aged;

(5) Ensure that regular, adequate, and accurate reports are submitted by the component parts of aging programs to the council;

(6) Publish in print or electronically regular reports of the council's activities and the adequacy of state programs for the aged; and

(7) Establish liaison with area agency councils on aging. (Ga. L. 1977, p. 815, § 2; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (6).

49-6-21.1. Additional duties and powers of council; report and recommendations.

Repealed by Ga. L. 2008, p. 366, § 1/SB 341, effective January 1, 2011.

Editor's notes. — This Code section was based on Code 1981, § 49-6-21.1, enacted by Ga. L. 2008, p. 366, § 1/SB 341.

ARTICLE 7

LICENSURE OF ADULT DAY CENTER

49-6-84. Authority of department; promulgation of rules and regulations; authority to issue or suspend licenses.

The department is authorized to promulgate rules and regulations to implement this article utilizing the public rule-making process to elicit input from consumers, providers, and advocates. The department is further authorized to issue, deny, suspend, or revoke licenses or take other enforcement actions against licensees or applicants as provided in Code Section 31-2-8. All rules and regulations and any enforcement actions initiated by the department shall comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 49-6-84, enacted by Ga. L. 2003, p. 298, § 1; Ga. L. 2009, p. 453, § 1-56/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Code Section 31-2-8" for "Code Section 31-2-11" in the second sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

49-6-86. (For effective date, see note.) Reasonable fees for licensure of adult day centers; use of fees.

Delayed effective date. — Ga. L. 2007, p. 348, § 3 provides this Code section becomes effective only when funds are specifically appropriated for purposes of the Act in an Appropriations Act making specific reference to that Act. Funds were not appropriated at the 2007, 2008, 2009, 2010, 2011, or 2012 sessions of the General Assembly.

CHAPTER 7

FAMILY-PLANNING SERVICES

Law reviews. — For article, “Child Welfare and Future Persons,” see 43 Ga. L. Rev. 367 (2009).
For note, “Conceiving Equality: Infertility-Related Illness Under the Pregnancy Discrimination Act,” see 26 Ga. St. U. L. Rev. 1361 (2010).

CHAPTER 9

TRANSFER OF DIVISION OF REHABILITATION SERVICES TO DEPARTMENT OF LABOR

Article 1		Sec.	
General Provisions			
Sec.		49-9-11.	Residency requirement; financial need.
49-9-1.	Definitions.	49-9-12.	Independent living program.
49-9-2.	Creation of the Georgia Vocational Rehabilitation Services Board.	49-9-13.	Entitlement to hearing if aggrieved.
49-9-3.	Duties of executive director of Georgia Vocational Rehabilitation Agency.	49-9-14.	Rights not transferable; exempt from creditors.
49-9-4.	Creation of Georgia Vocational Rehabilitation Agency; function.	49-9-15.	Coverage by a hospitalization or medical insurance policy.
49-9-5.	Provision of services to persons with disabilities.	49-9-16.	Lien upon causes of actions; procedure for perfecting lien; notice; fee; releases and covenants not to sue.
49-9-6.	Authorization to utilize funds.	49-9-17.	Authorization to retain title; authorization to sell; surplus; receipts; deposit of funds received.
49-9-7.	Cooperation to carry out the purposes of federal statutes.	49-9-18.	Confidentiality; penalty.
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49-9-9.	Budget estimates.	49-9-20.	Rights of General Assembly to amend or repeal chapter.
49-9-10.	Accepting and use of gifts.	49-9-21.	Delivery of deaf-blind services and techniques leading to max-

Sec. imum independence; integration.

Article 2

Vending Facilities on State Property

49-9-40. Definitions.

Sec. 49-9-41. Declaration of public policy; income.
49-9-42. Operation of vending facilities on state property; preference for licensed disabled persons.

Editor's notes. — The former chapter consisted of Code Sections 49-9-1 through 49-9-42, relating to vocational rehabilitation services, and was based on Ga. L. 1951, p. 516, §§ 1, 3-15, 23; Ga. L. 1956, p. 52, §§ 1, 2; Ga. L. 1956, p. 373, § 1; Ga. L. 1957, p. 274, § 1; Ga. L. 1959, p. 343, §§ 1, 2; Ga. L. 1961, p. 400, § 1; Ga. L. 1964, p. 386, §§ 1-3; Ga. L. 1969, p. 944,

§ 1; Ga. L. 1971, p. 89, § 1; Ga. L. 1972, p. 1015, §§ 1212, 1216; Ga. L. 1978, p. 239, § 1; Ga. L. 1979, p. 132, § 5; Ga. L. 1982, p. 3, § 49; Ga. L. 1982, p. 833, §§ 1, 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 49; Ga. L. 1995, p. 1302, §§ 12, 14, 16, and was repealed by Ga. L. 2000, p. 1137, § 12, effective July 1, 2001.

ARTICLE 1

GENERAL PROVISIONS

49-9-1. Definitions.

As used in this chapter, the term or terms:

(1) "Agency" means the Georgia Vocational Rehabilitation Agency created pursuant to Code Section 49-9-4.

(2) "Blind person" means a person who has:

(A) Not more than 20/200 central visual acuity in the better eye after correction; or

(B) An equally disabling loss of the visual field.

(3) "Board" means the Georgia Vocational Rehabilitation Services Board created pursuant to Code Section 49-9-2.

(4) "Director" means the agency executive director appointed pursuant to Code Section 49-9-3.

(5) "Disability to employment" means a physical or mental condition which constitutes, contributes to, or, if not corrected, will probably result in an impairment of occupational performance.

(6) "Occupational license" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(7) "Person with disabilities" means an individual having a physical or mental impairment that substantially limits one or more of the major life activities.

(8) “Prosthetic appliance” means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(9) “Regulations” means regulations made by the director with the approval of the board and promulgated in the manner prescribed by law.

(10) “Rehabilitation center” means a facility operated for the purpose of assisting in the rehabilitation of persons with disabilities which provides one or more of the following types of services:

(A) Testing, fitting, or training in the use of prosthetic devices;

(B) Prevocational or conditioning therapy;

(C) Physical, corrective, or occupational therapy; or

(D) Adjustment training or evaluation or control of special disabilities; or a facility in which a coordinated approach is made to the physical, mental, and vocational evaluation of persons with disabilities and an integrated program of physical restoration and relating training is provided under competent professional supervision and direction.

(11) “Rehabilitation training” means all necessary training provided to a person with disabilities to compensate for his or her disability to employment, including, but not limited to, manual preconditioning, relating, vocational, and supplementary training and training provided for the purpose of developing occupational skills and capacities.

(12) “Vocational rehabilitation” and “vocational rehabilitation services” mean any service, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a person with disabilities for his or her disability to employment and to enable such individual to engage in a remunerative occupation.

(13) “Workshop” means a place where any manufacture or handwork is carried on and which is operated for the primary purpose of providing rehabilitative activities, including the use of monetary rewards as an incentive practice for persons with disabilities unable to engage in the competitive labor market. Persons receiving services in workshops shall not be considered as employees of the state for workers’ compensation or any other purposes. (Code 1981, § 34-15-1, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-1, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-1 as present Code Section 49-9-1; added paragraph (1); redesignated former

paragraph (1) as paragraph (2); added paragraph (3); deleted former paragraphs (2) and (3), which read: "(2) 'Commissioner' means the Commissioner of Labor.

"(3) 'Department' means the Department of Labor."; substituted "agency executive director appointed pursuant to Code Section 49-9-3" for "official of the division who is charged with the administration of its functions under this chapter" at the end of paragraph (4); deleted former para-

graph (6), which read: "(6) 'Division' means the Division of Rehabilitation Services of the Department of Labor."; redesignated former paragraphs (7) through (14) as present paragraphs (6) through (13), respectively; substituted "director with the approval of the board" for "Commissioner" in paragraph (9); and deleted "retirement," following "compensation" near the end of the last sentence of paragraph (13).

49-9-2. Creation of the Georgia Vocational Rehabilitation Services Board.

(a) There is created the Georgia Vocational Rehabilitation Services Board. The board shall consist of nine members who work or have worked in the area of vocational rehabilitation or who are a part of the vocational rehabilitation community; provided, however, that five members shall be persons with disabilities or family members of persons with disabilities.

(b) The members of the board shall be appointed by the Governor. The first such members shall be appointed by the Governor to take office on July 1, 2012, for initial terms as follows: Three such members shall be appointed for terms of one year; three such members shall be appointed for terms of two years; and three such members shall be appointed for terms of three years. Thereafter, the Governor shall appoint successors upon the expiration of the respective terms of office for terms of three years. All such members shall serve until their successors are appointed and qualified. Such members shall be eligible for reappointment to successive terms of office as members of the board.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board elected by and from the membership of the board who shall be the presiding officer of the board. The term of the chairperson shall be established by rules of the board.

(f) A quorum for transacting business shall be determined by the members of the board.

(g) The members of the board shall receive a per diem allowance and expenses as shall be set and approved by the Office of Planning and

Budget in conformance with rates and allowances set for members of other state boards.

(h) In addition to the powers and duties set forth in this chapter, the board shall recommend to the Governor and the General Assembly changes in state programs, statutes, policies, budgets, and standards relating to vocational rehabilitation services, the improvement of coordination among state and local agencies that provide vocational rehabilitation services, and the improvement of the condition of citizens who are in need of vocational rehabilitation services. (Code 1981, § 49-9-2, enacted by Ga. L. 2012, p. 303, § 1/HB 1146.)

Effective date. — This Code section became effective July 1, 2012.

49-9-3. Duties of executive director of Georgia Vocational Rehabilitation Agency.

(a) There shall be an executive director of the Georgia Vocational Rehabilitation Agency nominated by the Governor and approved by the board. The director shall serve during the term of the Governor by whom he or she is appointed and at the pleasure of the board. If the Governor's term expires and the incoming Governor has not made a nomination or such nomination has not been approved by the board, the current director shall serve until a replacement is nominated by the incoming Governor and approved by the board.

(b) In carrying out his or her duties under this chapter, the director of the Georgia Vocational Rehabilitation Agency:

(1) Shall, with the approval of the board, prepare such regulations for promulgation by the board as he or she finds necessary to carry out the purposes of this chapter;

(2) Shall, with the approval of the board, prepare such policies and procedures as he or she finds necessary for the purposes of this chapter and establish appropriate subordinate administrative units within the agency;

(3) Shall recommend to the board for appointment such personnel as he or she deems necessary for the efficient performance of the functions of the agency;

(4) Shall prepare and submit to the board annual reports of activities and expenditures and, prior to each regular session of the General Assembly, estimates of sums required for carrying out this chapter and estimates of the amounts to be made available for this purpose from all sources;

(5) Shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter;

(6) May, with the approval of the board, delegate to any officer or employee of the agency such of his or her powers and duties, except the making of regulations and the appointment of personnel, as he or she finds necessary to carry out the purposes of this chapter; and

(7) Is designated as the administrator of a program provided under Section 221 of the federal Social Security Act, relating to disability adjudication services. The director shall receive, notwithstanding any other provision of law and in addition to his or her regular compensation, such compensation and allowance as may be augmented from grants by the appropriate federal agency in such amount as is determined by the federal agency to be commensurate with the duties imposed by Section 221 of the federal Social Security Act. (Code 1981, § 34-15-3, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-3, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-3 as present Code Section 49-9-3, and added subsection (a); designated the existing provisions as subsection (b); throughout subsection (b), substituted “board” for “Commissioner” and substi-

tuted “agency” for “division”; and substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” near the end of the introductory paragraph of subsection (b).

49-9-4. Creation of Georgia Vocational Rehabilitation Agency; function.

(a)(1) The Georgia Vocational Rehabilitation Agency is created and established to perform the functions and assume the duties, powers, and authority exercised on June 30, 2012, by the Division of Rehabilitation Services within the Department of Labor including the disability adjudication section and the Roosevelt Warm Springs Institute for Rehabilitation, and such division shall be reconstituted as the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(2) The Georgia Vocational Rehabilitation Agency shall be assigned to the Department of Human Services for administrative purposes only, as prescribed in Code Section 50-4-3.

(3) On and after July 1, 2012, the powers, functions, duties, programs, institutions, and authority of the Georgia Vocational Rehabilitation Agency relating to the former Division of Rehabilitation Services within the Department of Labor shall be performed and exercised by the Georgia Vocational Rehabilitation Agency pursuant to this article. The Georgia Vocational Rehabilitation Agency shall

take all necessary steps to ensure continuity of services for the vocational rehabilitation of persons with disabilities during such transfer.

(b) The agency shall be administered by a director appointed pursuant to Code Section 49-9-3. The policy-making functions which were vested in the Department of Labor pertaining to the Division of Rehabilitation Services are vested in the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(c) Any proceedings or other matters pending before the Division of Rehabilitation Services of the Department of Labor on June 30, 2012, which relate to the functions transferred to the Georgia Vocational Rehabilitation Agency shall be transferred to the agency on July 1, 2012.

(d) The Georgia Vocational Rehabilitation Agency shall, from July 1, 2012, assume possession and control of all records, papers, equipment, supplies, office space, and all other tangible property possessed and controlled by the Department of Labor as of June 30, 2012, in the Department of Labor's administration of the Division of Rehabilitation Services. All funds attributable to the Division of Rehabilitation Services and its programs and institutions from state, federal, and any other public or private source, shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012.

(e) On July 1, 2012, the Georgia Vocational Rehabilitation Agency shall receive custody of any state owned real property in the custody of the Department of Labor on June 30, 2012, which pertains to the functions transferred from the Division of Rehabilitation Services to the Georgia Vocational Rehabilitation Agency.

(f) Prior to July 1, 2012, the Office of Planning and Budget shall calculate, in consultation with the Department of Labor, the amount of all funds of or attributable to the Division of Rehabilitation Services and its programs and institutions from any source that are used to provide administrative or other services within the Department of Labor, including funds from the disability adjudication section, the cost allocation system, and any indirect costs funding from the federal government or any other source. The amount calculated shall be transferred to the agency on July 1, 2012.

(g) All officers, employees, and agents of the Division of Rehabilitation Services who, on June 30, 2012, are engaged in the performance of a function or duty which shall be vested in the Georgia Vocational Rehabilitation Agency on July 1, 2012, by this chapter, shall be automatically transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. An equivalent number of positions or funds of the Department of Labor which provide administrative support to the

Division of Rehabilitation Services shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. Such persons shall be subject to the employment practices and policies of the Georgia Vocational Rehabilitation Agency on and after July 1, 2012, but consistent with the compensation and benefits of other employees of that department holding positions substantially the same as the transferred employees, the compensation and benefits of such transferred employees shall not be reduced. Employees who are subject to the rules of the State Personnel Board and who are transferred to the Georgia Vocational Rehabilitation Agency shall retain all existing rights under such rules. Accrued annual and sick leave shall be retained by said employees as employees of the Georgia Vocational Rehabilitation Agency. The Department of Labor shall be responsible for payment of the accrued Fair Labor Standards Act compensatory time possessed by said employees. Such accrued compensatory time shall be used by or paid to said employees prior to July 1, 2012.

(h)(1) The Georgia Vocational Rehabilitation Agency is the designated state unit for the vocational rehabilitation program.

(2) The Georgia Vocational Rehabilitation Agency shall conform to federal standards in all respects necessary for receiving federal grants and the director of the Georgia Vocational Rehabilitation Agency is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(3) The Georgia Vocational Rehabilitation Agency shall take all necessary steps to secure at a minimum the same level of benefits provided pursuant to relevant federal statutes and appropriations received by the Division of Rehabilitation Services of the Department of Labor prior to June 30, 2012. The department shall also amend the state plan if necessary to meet federal funding requirements.

(4) The Georgia Vocational Rehabilitation Agency is authorized to employ, on a full or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the agency under this chapter. The agency is also authorized to contract for such professional services as may be necessary.

(5) Classified employees of the Georgia Vocational Rehabilitation Agency under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(i) The Georgia Vocational Rehabilitation Agency shall succeed to all rules, regulations, policies, procedures, and administrative orders of

the Department of Labor which are in effect on June 30, 2012, and which relate to the functions of the Division of Rehabilitation Services. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(j) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2012, by the Department of Labor or the Division of Rehabilitation Services pertaining to the Division of Rehabilitation Services transferred to the Georgia Vocational Rehabilitation Agency by this chapter shall continue to exist; and none of these rights, privileges, entitlements, obligations, and duties are impaired or diminished by reason of the transfer of the functions to the Georgia Vocational Rehabilitation Agency. In all such instances, the Georgia Vocational Rehabilitation Agency shall be substituted for the Department of Labor or the Division of Rehabilitation Services, and the Georgia Vocational Rehabilitation Agency shall succeed to the rights, privileges, entitlements, and duties under such contracts, leases, agreements, and other transactions.

(k) The Georgia Vocational Rehabilitation Agency shall conform all service delivery regions to the state service delivery regions provided in subsection (a) of Code Section 50-4-7. (Code 1981, § 34-15-2, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2009, p. 453, § 2-17/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Code 1981, § 49-9-4, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146; Ga. L. 2012, p. 446, § 2-45/HB 642.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, inserted “(now known as the Department of Human Services)” in the first and last sentences of subsection (a). The second 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” throughout this Code section.

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-2 as present Code Section 49-9-4, and rewrote this Code section. The second 2012 amendment, effective July 1, 2012, in the fourth sentence of subsection (d) (now subsection (g)), substituted “rules of the State Personnel Board” for “State Personnel Administration”, and substituted

“such rules” for “the State Personnel Administration”; and substituted “State Personnel Board” for “State Personnel Administration” at the end of paragraph (e)(4) (now paragraph (h)(5)).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

49-9-5. Provision of services to persons with disabilities.

The agency shall provide the services authorized by this chapter to persons with disabilities determined to be eligible therefor; and, in carrying out the purposes of this chapter, the agency is authorized, among other things:

(1) To cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this chapter to persons with disabilities; in studying the problems involved therein; and in establishing, developing, and providing, in conformity with the purposes of this chapter, such programs, facilities, and services as may be necessary or desirable;

(2) To enter into reciprocal agreements with other states to provide for the services authorized by this chapter to residents of the state concerned;

(3) To conduct research and compile statistics relating to the provision of services or the need of services by persons with disabilities;

(4) To license blind persons or other persons with disabilities to operate vending facilities under its supervision and control, subject to the terms and conditions provided in regulations, policies, and procedures issued pursuant to Code Section 49-9-3, on:

(A) State property;

(B) County or municipal property;

(C) Federal property, pursuant to delegation of authority under the Randolph-Sheppard Act (20 U.S. Code, Section 107b) (49 Stat. 1559) and any amendment thereto or any act of Congress relating to this subject; and

(D) Private property; and

(5) To provide for the establishment, supervision, and control of suitable business enterprises to be operated by persons with disabilities. (Code 1981, § 34-15-4, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-5, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-4 as present Code Section 49-9-5; in the introductory paragraph of this Code section, substituted “agency” for “department, through the division,” near the be-

ginning, and substituted “agency” for “division” near the end; and substituted “Code Section 49-9-3” for “paragraphs (1) and (2) of Code Section 34-15-3” near the end of the introductory language of paragraph (4).

49-9-6. Authorization to utilize funds.

The agency is authorized to utilize funds made available from appropriations by Congress, by gifts or grants from private sources, by appropriations of the General Assembly, or by transfer of funds from other state departments for the purpose of establishing and operating rehabilitation centers and workshops. (Code 1981, § 34-15-5, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-6, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-5 as present Code Section 49-9-6, and substituted “agency” for “Division of Rehabilitation Services” near the beginning of this Code section.

49-9-7. Cooperation to carry out the purposes of federal statutes.

The agency is empowered and directed to cooperate, pursuant to agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to the purposes of this chapter. The agency is authorized to adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes and appropriations, to administer any legislation pursuant thereto enacted by this state, to direct the disbursement and administer the use of all funds provided by the federal government or this state for the purposes of this chapter, and to do all things necessary to ensure the vocational rehabilitation of persons with disabilities. (Code 1981, § 34-15-6, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-7, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-6 as present Code Section 49-9-7; substituted “agency” for “department, through the division,” near the beginning of the first sentence and substituted “agency” for “department” near the beginning of the second sentence.

49-9-8. Office of State Treasurer designated custodian of federal moneys.

The Office of the State Treasurer is designated as custodian of all moneys received from the federal government for the purpose of carrying out any federal statutes pertaining to the purpose of this chapter. The Office of the State Treasurer shall make disbursements from such funds and all state funds available for such purposes, upon certification in the manner provided in Code Section 49-9-3. (Code 1981, § 34-15-7, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2010, p. 863,

§ 2/SB 296; Code 1981, § 49-9-8, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" twice in this Code section.

1, 2012, redesignated former Code Section 34-15-7 as present Code Section 49-9-8, and substituted "Code Section 49-9-3" for "paragraph (5) of Code Section 34-15-3" at the end of this Code section.

The 2012 amendment, effective July

49-9-9. Budget estimates.

Budget estimates of the amount of appropriations needed each fiscal year for vocational rehabilitation services and for the administration of the programs under this chapter shall be submitted by the director to the board and, upon approval by the board, shall be included in the estimates made by the board to the Office of Planning and Budget. In the event federal funds are available to the state for vocational rehabilitation purposes, the Georgia Vocational Rehabilitation Agency is authorized to comply with such requirements as may be necessary to obtain said federal funds in the maximum amount and most advantageous proportion possible insofar as this may be done without violating other provisions of the state law and Constitution. In the event Congress fails in any year to appropriate funds for grants-in-aid to the state for vocational rehabilitation purposes, the board shall include as a part of its budget a request for adequate state funds for vocational rehabilitation purposes. (Code 1981, § 34-15-8, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-9, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-8 as present Code Section 49-9-9; substituted "board" for "Commissioner" throughout this Code section; substituted

"Georgia Vocational Rehabilitation Agency" for "Division of Rehabilitation Services" in the second sentence; and substituted "its budget" for "his or her budget" in the last sentence.

49-9-10. Accepting and use of gifts.

The director is authorized and empowered, with the approval of the board, to accept and use gifts made unconditionally, by will or otherwise, for carrying out the purposes of this chapter. Gifts made under such conditions as are proper and consistent with this chapter may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift. (Code 1981, § 34-15-9, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-10, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section

34-15-9 as present Code Section 49-9-10, and substituted "board" for "Commis-

sioner” near the beginning of this Code section.

49-9-11. Residency requirement; financial need.

(a) Vocational rehabilitation services shall be provided to any qualified individual who is a bona fide resident of the state.

(b) The financial need of eligible persons with disabilities will be considered in the provision of vocational rehabilitation services to the extent allowed by federal or other state law. (Code 1981, § 34-15-10, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-11, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-10 as present Code Section 49-9-11.

49-9-12. Independent living program.

The Georgia Vocational Rehabilitation Agency is the designated state unit for the independent living program. The independent living program is authorized to provide or contract for the provision of such services as may be needed to enable persons with disabilities to attain the maximum degree of independent living. The powers delegated and authorized in this Code section for the agency shall be in addition to those previously authorized by any other law. The agency is authorized to cooperate with any federal agency in the administration of such a program. (Code 1981, § 34-15-11, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-12, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-11 as present Code Section 49-9-12; substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilita-

tion Services of the Department of Labor” in the first sentence; substituted “agency” for “division” in the third sentence; and substituted “agency” for “department” in the last sentence.

49-9-13. Entitlement to hearing if aggrieved.

Any individual applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the agency shall be entitled, in accordance with regulations, to a hearing in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” and in accordance with applicable federal laws and regulations. (Code 1981, § 34-15-12, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-13, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-12 as present Code Section 49-9-13, and substituted “agency” for “division” near the middle of this Code section.

49-9-14. Rights not transferable; exempt from creditors.

Any rights of persons with disabilities to maintenance under this chapter shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors. (Code 1981, § 34-15-13, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-14, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-13 as present Code Section 49-9-14.

49-9-15. Coverage by a hospitalization or medical insurance policy.

Where a person with disabilities who receives vocational rehabilitation services is covered by a hospitalization or medical insurance policy, the Georgia Vocational Rehabilitation Agency shall be subrogated to the rights of such person with disabilities to recover in an amount not to exceed the cost of vocational rehabilitation services rendered by the Georgia Vocational Rehabilitation Agency, exclusive of those services for which eligibility is not predicated on the need for financial assistance. Where the person with disabilities receives vocational rehabilitation services without disclosing that he or she is covered by a hospitalization or medical insurance policy, he or she shall be liable therefor to the Georgia Vocational Rehabilitation Agency in an amount not to exceed the cost of rehabilitation services rendered, exclusive of those services for which eligibility is not predicated on the need for financial assistance, or in an amount not to exceed the insurance reimbursement received, whichever is the lesser. (Code 1981, § 34-15-14, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-15, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-14 as present Code Section 49-9-15, and substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services” throughout this Code section.

49-9-16. Lien upon causes of actions; procedure for perfecting lien; notice; fee; releases and covenants not to sue.

Where a person with disabilities who receives vocational rehabilitation services is entitled to recover damages for said injuries, the Georgia Vocational Rehabilitation Agency shall have a lien, in an

amount not to exceed the cost of rehabilitation services rendered, upon any and all causes of action accruing to the individual to whom such services were furnished, or to the legal representative of such individual, on account of injuries giving rise to such cause of action and which necessitated such rehabilitation services, subject, however, to any attorney's lien. In order to perfect such lien, the Georgia Vocational Rehabilitation Agency shall file in the office of the clerk of the superior court of the county wherein the individual resides a verified statement setting forth the name and address of such individual; the name and address of the Georgia Vocational Rehabilitation Agency; the amount claimed to be due for such vocational rehabilitation services; and, to the best of claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by such injured individual, or the legal representative of such individual, to be liable for damages arising from such injuries. The Georgia Vocational Rehabilitation Agency shall also, within one day after the filing of such claim or lien, mail a copy thereof to any person, firm, or corporation so claimed to be liable for such damages to the addresses as given in such statement. The filing of such claim or lien shall be notice thereof to all persons, firms, or corporations liable for such damages, whether or not they are named in such claim or lien. The clerk of the court shall endorse thereon the date and hour of filing in the hospital lien book, along with the name of the claimant, the injured person, the amount claimed, and the names and addresses of those claimed to be liable for damages. Such information shall be recorded in the name of the injured individual. The clerk shall be paid \$1.00 as his or her fee for such filing. No release for such cause or causes of action or any judgment thereon, or any covenant not to sue thereon, shall be valid or effectual as against such lien unless the holder thereof shall join therein or execute a release of such lien; and the claimant of such lien may enforce the lien by an action against the person, firm, or corporation liable for such damages. (Code 1981, § 34-15-15, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-16, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-15 as present Code Section 49-9-16; substituted "Georgia Vocational Rehabilitation Agency" for "Division of Rehabilitation Services" throughout this Code section; deleted a comma following "individual resides" near the middle of the second sentence; and inserted "or her" in the next to the last sentence.

tion Services" throughout this Code section; deleted a comma following "individual resides" near the middle of the second sentence; and inserted "or her" in the next to the last sentence.

49-9-17. Authorization to retain title; authorization to sell; surplus; receipts; deposit of funds received.

The agency is authorized to retain title to any property, tools, instruments, training supplies, equipment, or other items of value acquired for use of persons with disabilities and to repossess and transfer them for the use of other persons with disabilities. The board

is authorized to offer for sale any items acquired in the operation of the program under this chapter when they are no longer necessary or to exchange them for necessary items which may be used to greater advantage. When any such surplus equipment is sold or exchanged, a receipt for it shall be taken from the purchaser showing the consideration given for such equipment and shall be forwarded to the Office of the State Treasurer; and any funds received by the agency pursuant to any such transactions shall be deposited in the state treasury in the appropriate federal or state rehabilitation account and shall be available for expenditures for any purposes consistent with this chapter. (Code 1981, § 34-15-16, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2010, p. 863, § 2/SB 296; Code 1981, § 49-9-17, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in the middle of the last sentence of this Code section.

1, 2012, redesignated former Code Section 34-15-16 as present Code Section 49-9-17; substituted “agency” for “division” in the first and third sentences, and substituted “board” for “Commissioner” near the beginning of the second sentence.

The 2012 amendment, effective July

49-9-18. Confidentiality; penalty.

It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program and in accordance with regulations, policies, and procedures, for any person or persons to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records. Any person who violates any provision of this Code section shall be guilty of a misdemeanor. (Code 1981, § 34-15-17, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-18, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-17 as present Code Section 49-9-18.

49-9-19. Governing prohibitions.

Employees of the agency engaged in functions under this chapter shall be governed by the prohibitions in the rules and regulations of the State Personnel Board and the federal Office of Personnel Management from participation in political activity. (Code 1981, § 34-15-18, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-19, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-18 as present Code Section 49-9-19, and substituted “agency” for “department” near the beginning of this Code section.

49-9-20. Rights of General Assembly to amend or repeal chapter.

The General Assembly reserves the right to amend or repeal all or any part of this chapter at any time, and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. (Code 1981, § 34-15-19, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-20, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-19 as present Code Section 49-9-20.

49-9-21. Delivery of deaf-blind services and techniques leading to maximum independence; integration.

(a) The Georgia Vocational Rehabilitation Agency shall oversee the delivery of deaf-blind services and techniques provided by an organization pursuant to subsection (c) of this Code section that lead to maximum independence and employment for individuals with both a hearing and a vision loss. These services shall include, but not be limited to, transition of deaf-blind youth from education to the work force; identification of deaf-blind individuals in Georgia; communication access for varying groups of individuals and their unique needs; training deaf-blind individuals in orientation and mobility, rehabilitation, and Braille; utilization of support service providers to function as sighted guides, communication facilitators, and providers of transportation; support and increase in the number of qualified sign language interpreters working with deaf-blind individuals; use of adaptive technologies, such as computers, telebrailers, and TTY devices; strategies and techniques to assist deaf-blind individuals in obtaining the highest level of independence possible; and peer support which provides access to information, people, and places.

(b) The agency shall, to the greatest extent possible, integrate the services and techniques required pursuant to subsection (a) of this Code section into its standard practices and procedures with the objective of providing appropriate services in an appropriate manner to individuals in the deaf-blind community.

(c) Subject to appropriations by the General Assembly, the Georgia Vocational Rehabilitation Agency shall retain an organization knowl-

edgeable on deaf-blind issues to provide the services and techniques included in subsection (a) of this Code section to deaf-blind individuals and to provide comprehensive training to agency staff on such services and techniques required pursuant to subsection (a) of this Code section. Such organization shall be retained no later than six months after funding from appropriations by the General Assembly has been made available for expenditure by the agency. (Code 1981, § 34-15-20, enacted by Ga. L. 2007, p. 257, § 1/SB 49; Ga. L. 2008, p. 324, § 34/SB 455; Code 1981, § 49-9-21, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-20 as present Code Section 49-9-21; substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” in the first sentence of subsection (a); substituted “agency” for “division” in sub-

section (b) and in the first sentence of subsection (c); and, in subsection (c), substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services” in the first sentence, and substituted “agency” for “department” at the end of the last sentence.

ARTICLE 2

VENDING FACILITIES ON STATE PROPERTY

49-9-40. Definitions.

As used in this article, the term:

(1) “State property” means any building, land, or other real property owned, leased, or occupied by any department, commission, board, bureau, agency, public corporation, or other instrumentality of the state, including, but not limited to, the Georgia Building Authority, and any other real property in which the state has a legal or beneficial interest; provided, however, the term “state property” shall not include any property, real or personal, owned or leased or otherwise under the jurisdiction of the Board of Regents of the University System of Georgia, the Georgia Education Authority (University), or any county or independent school system of this state.

(2) “Vending facility” means vending stands, vending machines, snack bars, cart service, shelters, counters, and such other appropriate facilities and equipment as may be necessary for the sale of articles or services by licensed blind persons or other persons with disabilities, as prescribed by rules and regulations adopted by the agency. (Code 1981, § 34-15-40, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-40, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-40 as present Code Section 49-9-40, and substituted “agency” for “department” at the end of paragraph (2).

49-9-41. Declaration of public policy; income.

To effectuate the purposes of this article, it is declared to be public policy of the state that on any state property where the board determines it to be feasible to establish a vending facility to be operated by a licensed operator as provided in this article and where the agency or department or custodian of such property determines that such facility can be established without undue inconvenience to the operation being carried on in such state building or property, the preference accorded in this article shall require that such vending facility site not be deemed available for letting to competitive bidders for revenue-producing purposes unless the board declines to establish on such site a vending facility for blind persons or other persons with disabilities. The income to the agency or department or custodian controlling the space for such facility sites shall generally not be expected to exceed reimbursement for the cost of providing such facility site space and the services connected therewith; but in any case where such income exceeds those purposes, it shall be paid into the state treasury, subject to certification and audit. (Code 1981, § 34-15-41, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-41, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-41 as present Code Section 49-9-41; in the first sentence of this Code section, substituted “board” for “Commissioner of Labor” near the beginning, and substituted “board” for “Commissioner” near the end; and inserted “or department or custodian” near the beginning of the second sentence.

49-9-42. Operation of vending facilities on state property; preference for licensed disabled persons.

For the purpose of providing blind persons or other persons with disabilities with remunerative employment, enlarging their economic opportunities, and stimulating them to greater effort in striving to make themselves self-supporting, such blind persons or other persons with disabilities who are licensed by the Georgia Vocational Rehabilitation Agency shall be authorized to operate vending facilities on any state property where such vending facilities may be properly and satisfactorily operated by blind persons or other persons with disabilities. In authorizing the operation of vending facilities on state property, preference shall be given, so far as feasible, to blind persons or other persons with disabilities licensed by the Georgia Vocational Rehabilitation Agency as provided in this article; and the head of each department or agency in control of the maintenance, operation, and

protection of state property shall, after consultation with the board and with the approval of the Governor, prescribe regulations designed to assure such preference (including assignment of vending machine income to achieve and protect such preference) for such licensed blind persons or other persons with disabilities without unduly inconveniencing such departments and agencies or adversely affecting the interests of the state. (Code 1981, § 34-15-42, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-42, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-42 as present Code Section 49-9-42, substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation

Services of the Department of Labor” in the first and second sentences, and substituted “board” for “Commissioner” near the middle of the second sentence.

CHAPTER 10

GEORGIA BOARD FOR PHYSICIAN WORKFORCE

Sec.		Sec.	
49-10-1.	Board for physician workforce; composition; expense allowances; staffing; advisory committees.	49-10-2.	Purpose.
		49-10-3.	Powers, duties, and responsibilities.

49-10-1. Board for physician workforce; composition; expense allowances; staffing; advisory committees.

(a)(1) The Joint Board of Family Practice which existed on January 1, 1998, is continued in existence but on and after July 1, 1998, shall become and be known as the Georgia Board for Physician Workforce. The Georgia Board for Physician Workforce, referred to in this chapter as the “board,” shall be attached to the Department of Community Health for administrative purposes only, as defined by Code Section 50-4-3, except that such department shall prepare and submit the budget for that board in concurrence with that board.

(2) The Georgia Board for Physician Workforce shall be composed of 15 members, all of whom are residents of this state, as follows:

(A) Five members shall be primary care physicians, at least three of whom shall be from rural areas;

(B) Five members shall be physicians who are not primary care physicians, at least three of whom shall practice in rural areas;

(C) Three members shall be representatives of hospitals which are not teaching hospitals, with at least two of those three members being representatives of rural, nonprofit hospitals;

(D) One member shall be a representative from the business community;

(E) One member shall have no connection with the practice of medicine or the provision of health care; and

(F) The physicians on the board shall represent a diversity of medical disciplines, including, but not limited to, women's health, geriatrics, and children's health. The board shall represent the gender, racial, and geographical diversity of the state.

(3) All members of the board shall be appointed by the Governor and confirmed by the Senate. The terms of office of all the members of the Joint Board of Family Practice shall expire July 1, 1998, but only at such time on or after that date when all 15 of the initial members of the Georgia Board of Physician Workforce have been appointed and qualified. No such initial member shall exercise any power under this chapter until all 15 members have been appointed and qualified. The initial members of the board who are appointed thereto shall take office for initial terms of office as follows:

(A) Two primary care physicians, two physicians who are not primary care physicians, and one representative of a hospital which is not a teaching hospital shall be appointed to two-year terms of office;

(B) Two primary care physicians, two physicians who are not primary care physicians, and one representative of a hospital which is not a teaching hospital shall be appointed to four-year terms of office; and

(C) The remainder of the board shall be appointed to six-year terms of office.

Thereafter, successors to such members shall be appointed for terms of six years. The Governor shall designate the term to which each initial member is appointed. All members shall serve until their successors are appointed and qualified. Members appointed under this paragraph shall be eligible to serve on the board until confirmed by the Senate at the session of the General Assembly next following their appointment.

(4) In case of a vacancy on the board by reason of death or resignation of a member or for any other cause other than the expiration of the member's term of office, the board shall by secret ballot elect a temporary successor. If the General Assembly is in

session, the temporary successor shall serve until the end of that session. If the General Assembly is not in session, the temporary successor shall serve until the end of the session next following the vacancy or until the expiration of the vacated member's term of office, whichever occurs first. The Governor shall appoint a permanent successor who shall be confirmed by the Senate. The permanent successor shall take office on the first day after the General Assembly adjourns and shall serve for the unexpired term and until his or her successor is appointed and qualified.

(5) The office on the board of a member thereof who fails to attend more than three consecutive regular meetings of the board, without excuse approved by resolution of the board, shall become vacant.

(b) The board shall annually elect from its membership a chair, a vice chair, and a secretary-treasurer by ballot. Meetings shall be held at the call of the chair or upon written request of a majority of the members. A majority of members then in office shall constitute a quorum and shall have the authority to act upon any matter properly brought before the board. The board shall keep permanent minutes and records of all its proceedings and actions.

(c) Each member of the board shall receive the same expense allowance per day as that received by a member of the General Assembly for each day or substantial portion thereof that such member of the board is engaged in the work of the board, in addition to such reimbursement for travel and other expenses as is normally allowed to state employees. No member of the board shall receive the above per diem for more than 30 days in any one calendar year.

(d) The Department of Community Health, with the concurrence of the board, shall have the authority to employ such administrative staff as is necessary to carry out the functions of the board. Such staff members shall be employed within the limits of the appropriations made to the board.

(e) The board, as it deems appropriate, shall have the authority to appoint advisory committees to advise the board on the fulfillment of its duties. The members of the advisory committees shall not receive any per diem or reimbursements; provided, however, that such members shall receive the mileage allowance provided for in Code Section 50-19-7 for the use of a personal car in connection with attendance at meetings called by the board. (Code 1981, § 49-10-1, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 1999, p. 296, § 21; Ga. L. 2000, p. 1421, § 2; Ga. L. 2011, p. 459, § 6/HB 509.)

The 2011 amendment, effective July 1, 2011, added “, at least three of whom shall be from rural areas” at the end of

subparagraph (a)(2)(A); added “, at least three of whom shall practice in rural areas” at the end of subparagraph (a)(2)(B);

and substituted “two of those three members being representatives of rural, nonprofit hospitals” for “one of those three

members being a representative of a rural, nonprofit hospital” at the end of subparagraph (a)(2)(C).

49-10-2. Purpose.

The purpose of the board shall be to address the health care workforce needs of Georgia communities through the support and development of medical education programs and to increase the number of physicians and health care practitioners practicing in underserved rural areas. (Code 1981, § 49-10-2, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 2011, p. 459, § 7/HB 509.)

The 2011 amendment, effective July 1, 2011, substituted “health care” for “physician” near the beginning, and added

“and to increase the number of physicians and health care practitioners practicing in underserved rural areas” at the end.

49-10-3. Powers, duties, and responsibilities.

The board shall have the following powers, duties, and responsibilities:

(1) To locate and determine specific underserved areas of the state in which unmet priority needs exist for physicians and health care practitioners by monitoring and evaluating the supply and distribution of physicians and health care practitioners by specialty and geographical location;

(2) To award service cancelable loans and scholarships pursuant to Part 6 of Article 7 of Chapter 3 of Title 20, Chapter 34 of Title 31, or as otherwise provided by law;

(3) To approve and allocate state appropriations for family practice training programs, including but not limited to fellowships in geriatrics and other areas of need as may be identified by the board;

(4) To approve and allocate state appropriations for designated pediatric training programs;

(5) To approve and allocate any other state funds appropriated to the Georgia Board for Physician Workforce to carry out its purposes;

(6) To coordinate and conduct with other state, federal, and private entities, as appropriate, activities to increase the number of graduating physicians and health care practitioners who remain in Georgia to practice with an emphasis on medically underserved areas of the state;

(7) To apply for grants and to solicit and accept donations, gifts, and contributions from any source for the purposes of studying or engaging one or more contractors to study issues relevant to medical

education or implementing initiatives designed to enhance the medical education infrastructure of this state and to meet the physician and other health care practitioners workforce needs of Georgia communities; and

(8) To carry out any other functions assigned to the board by general law. (Code 1981, § 49-10-3, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 2009, p. 77, § 1/HB 49; Ga. L. 2011, p. 459, § 7/HB 509; Ga. L. 2012, p. 775, § 49/HB 942.)

The 2011 amendment, effective July 1, 2011, in paragraphs (1) and (6), inserted “and health care practitioners”; added paragraph (2); redesignated former paragraphs (2) through (7) as present paragraphs (3) through (8), respectively; and inserted “and other health care practitioners” near the end of paragraph (7).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “To award service” for “Award service” at the beginning of paragraph (2).

TITLE 50

STATE GOVERNMENT

Chap.

1. General Provisions, 50-1-1 through 50-1-9.
2. Boundaries and Jurisdiction of the State, 50-2-1 through 50-2-28.
4. Organization of Executive Branch Generally, 50-4-1 through 50-4-7.
5. Department of Administrative Services, 50-5-1 through 50-5-202.
- 5A. Office of State Treasurer, 50-5A-1 through 50-5A-11.
- 5B. State Accounting Office, 50-5B-1 through 50-5B-24.
6. Department of Audits and Accounts, 50-6-1 through 50-6-32.
7. Department of Economic Development, 50-7-1 through 50-7-80.
8. Department of Community Affairs, 50-8-1 through 50-8-242.
9. Georgia Building Authority, 50-9-1 through 50-9-111.
10. Georgia Development Authority, 50-10-1 through 50-10-10.
12. Commissions and Other Agencies, 50-12-1 through 50-12-147.
13. Administrative Procedure, 50-13-1 through 50-13-44.
- 13A. Tax Tribunals, 50-13A-1 through 50-13A-20.
14. Open and Public Meetings, 50-14-1 through 50-14-6.
16. Public Property, 50-16-1 through 50-16-183.
17. State Debt, Investment, and Depositories, 50-17-1 through 50-17-105.
18. State Printing and Documents, 50-18-1 through 50-18-135.
20. Relations With Nonprofit Contractors, 50-20-1 through 50-20-8.
21. Waiver of Sovereign Immunity as to Actions Ex Contractu; State Tort Claims, 50-21-1 through 50-21-37.

22. Managerial Control Over Acquisition of Professional Services, 50-22-1 through 50-22-9.
23. Environmental Finance Authority, 50-23-1 through 50-23-35.
25. Georgia Technology Authority, 50-25-1 through 50-25-16.
26. Housing and Finance Authority, 50-26-1 through 50-26-22.
27. Lottery for Education, 50-27-1 through 50-27-55.
29. Information Technology, 50-29-1 through 50-29-12.
32. Georgia Regional Transportation Authority, 50-32-1 through 50-32-71.
34. OneGeorgia Authority, 50-34-1 through 50-34-18.
36. Verification of Lawful Presence Within United States, 50-36-1 through 50-36-3.
37. Guaranteed Energy Savings Performance Contracting, 50-37-1 through 50-37-8.

Law reviews. — For article, v. Oregon Department of Agriculture,” see “State-Created Property and Due Process 44 Ga. L. Rev. 161 (2009).
of Law: Filling the Void Left by Engquist

CHAPTER 1

GENERAL PROVISIONS

Sec.		placement of licenses, state
50-1-5.	Meetings by teleconference or	identification cards, and other
	other similar means.	documents.
50-1-9.	Natural disaster defined; re-	

50-1-5. Meetings by teleconference or other similar means.

(a) Unless specifically prohibited by the laws relating to a particular board, body, or committee, any board, body, or committee of state government may meet by teleconference or other similar means. The methods of meeting permitted under this Code section shall include telephone conference calls, meetings held through two-way interactive closed circuit television or satellite television signal, or any other similar method which allows each member of the board or body

participating in the meeting to hear and speak to each other member participating in the meeting.

(b) Nothing in this Code section shall eliminate any otherwise applicable requirement for giving notice of any meeting. Likewise, nothing in this Code section shall create a requirement for giving notice of any meeting where it does not otherwise exist. The notice shall list each location where any member of the board, body, or committee plans to participate in the meeting if the meeting is otherwise open to the public; provided, however, it shall not be grounds to contest any actions of the board, body, or committee as provided in Code Section 50-14-1 if a member participates from a location other than the location listed in the notice. At a minimum, the notice shall list one specific location where the public can participate in the meeting if the meeting is otherwise open to the public. The notice shall further conform with the notice provisions of Code Section 50-14-1. Any meeting which is otherwise required by law to be open to the public shall be open to the public at each location listed in the notice or where any member of the board, body, or committee participates in the meeting.

(c) The provisions of this Code section shall be broadly construed to cover any board, body, or committee of state government which is required or authorized to hold any meeting concerning state government affairs, regardless of the name by which any such entity may be known. The provisions of this Code section are specifically made applicable to the legislative and judicial branches of state government as well as the executive branch. With respect to the judicial branch, however, this Code section shall not apply to actual court sessions but shall apply to other administrative or judicial proceedings in the judicial branch. With respect to the legislative branch, this Code section shall not apply to actual sessions of the Senate or the House of Representatives but shall apply to committee meetings and other administrative proceedings. (Code 1981, § 50-1-5, enacted by Ga. L. 1996, p. 1300, § 1; Ga. L. 2012, p. 218, § 15/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted “notice provisions of” for “provisions of ‘due notice’ as provided in” in the next-to-last sentence of subsection (b).

50-1-9. Natural disaster defined; replacement of licenses, state identification cards, and other documents.

(a) As used in this Code section, the term “natural disaster” shall mean a flood, tornado, hurricane, earthquake, or other occurrence for which the President of the United States has made a federal disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121-5206.

(b) Each state agency that issues permits, licenses, certificates, or identification cards to citizens of this state including, but not limited to, drivers' licenses, state identification cards, professional licenses, professional certifications, professional registrations, professional permits, and birth certificates, shall issue replacement permits, licenses, certificates, or identification cards without charge to citizens who apply for such replacement permits, licenses, certificates, or identification cards and who demonstrate that their original permits, licenses, certificates, or identification cards were lost or destroyed as the direct result of a natural disaster if such application is made within 60 days following a federal disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121-5206, and if such citizen is a resident of the area included within such federal disaster declaration. (Code 1981, § 50-1-9, enacted by Ga. L. 2010, p. 336, § 1/HB 1019.)

Effective date. — This Code section became effective May 24, 2010.

CHAPTER 2

BOUNDARIES AND JURISDICTION OF THE STATE

Article 2
Jurisdiction

Sec.
50-2-28. Capitol Square designated;

state control and jurisdiction over buildings and grounds; Governor authorized to deed part of grounds for traffic movement.

ARTICLE 2

JURISDICTION

50-2-23. Exclusive jurisdiction ceded over lands acquired by United States; exceptions.

JUDICIAL DECISIONS

Arrest on Dobbins Air Force Base was lawful. — Trial court did not err in concluding that a defendant's arrest on Dobbins Air Force Base was lawful based on evidence that the State of Georgia retained criminal jurisdiction over lands in the state used for federal military pur-

poses, including a Department of the Army jurisdiction statement specifically for Dobbins recognizing the the United States did not have exclusive jurisdiction over the property. *Devega v. State*, 286 Ga. 448, 689 S.E.2d 293 (2010).

50-2-28. Capitol Square designated; state control and jurisdiction over buildings and grounds; Governor authorized to deed part of grounds for traffic movement.

(a) The following area is designated as “Capitol Square”:

(1) The property owned by this state and the sidewalks and streets within the area in the City of Atlanta bounded by Washington Street, Trinity Avenue, Memorial Drive, Capitol Avenue, and Martin Luther King, Jr. Drive; and

(2) The buildings and property owned and operated by the Georgia Building Authority which are located on or bounded by Central Avenue, Trinity Avenue, Memorial Drive, Capitol Avenue, Jessie Hill, Jr. Drive, Martin Luther King, Jr. Drive, Peachtree Street, and Marietta Street.

(b) The state shall have the same control and jurisdiction over the use of the buildings and grounds owned by the state and designated as Capitol Square as have been authorized by law for the control and supervision of the public property formerly known as the State Capitol Buildings and Grounds.

(c) The Governor is authorized and empowered to deed, upon unanimous approval of the Governor, an appointee of the Governor who is not the Attorney General, and state auditor, upon such terms and conditions as they may deem to be to the best interests of the state, to the City of Atlanta or other appropriate governmental entity such part of the grounds owned by the state and facing Capitol Avenue that is deemed necessary and essential to widen, straighten, and improve Capitol Avenue at the entrance to Martin Luther King, Jr. Drive, so as to route traffic to such other property which is essential or necessary to aid in the movement of traffic around Capitol Square. (Ga. L. 1953, Nov.-Dec. Sess., p. 164, §§ 1-3; Ga. L. 1988, p. 426, § 1; Ga. L. 2010, p. 137, § 2/HB 1074.)

The 2010 amendment, effective July 1, 2010, substituted the present provisions of subsection (a) for the former provisions, which read: “The property owned by this state and the sidewalks and streets within the area in the City of Atlanta bounded by Washington Street, Trinity Avenue, Memorial Drive, Capitol Avenue, Central Place, and Martin Luther King, Jr. Drive is designated as the Capi-

tol Square.”; deleted “the” preceding “Capitol Square” in the middle of subsection (b); and, in subsection (c), inserted “or other appropriate governmental entity”, substituted “widen, straighten, and improve” for “widen and straighten”, substituted “to such other property” for “into Piedmont Avenue, and such other property owned by the state”, and deleted “the” preceding “Capitol” at the end.

CHAPTER 3

STATE FLAG, SEAL, AND OTHER SYMBOLS

ARTICLE 1

STATE AND OTHER FLAGS

50-3-2. Pledge of allegiance to state flag.

Law reviews. — For article, “Ritual, Emotion, and Political Belief: The Search for the Constitutional Limit to Patriotic Education in Public Schools,” see 43 Ga. L. Rev. 447 (2009).

50-3-9. Abuse of federal, state, or Confederate flag unlawful.

RESEARCH REFERENCES

ALR. — Validity, and standing to challenge validity, of state statute prohibiting flag desecration and misuse, 31 ALR6th 333.

50-3-11. Penalty.

RESEARCH REFERENCES

ALR. — Validity, and standing to challenge validity, of state statute prohibiting flag desecration and misuse, 31 ALR6th 333.

ARTICLE 4

OFFICIAL STATE LANGUAGE

50-3-100. English designated as official language; constitutional rights not denied; authorization for documents and forms in other languages; exceptions.

Cross references. — English version of insurance policy controls, § 33-1-22.

CHAPTER 4

ORGANIZATION OF EXECUTIVE BRANCH GENERALLY

Sec.
50-4-7. State service delivery regions.

50-4-7. State service delivery regions.

(a) For the purpose of delivering state services to local units of government and citizens and for the purpose of establishing state agency regional boundaries, there are created 12 state service delivery regions as follows:

(1) State Service Delivery Region 1 shall be composed of Bartow, Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Haralson, Murray, Paulding, Pickens, Polk, Walker, and Whitfield counties;

(2) State Service Delivery Region 2 shall be composed of Banks, Dawson, Forsyth, Franklin, Habersham, Hall, Hart, Lumpkin, Rabun, Stephens, Towns, Union, and White counties;

(3) State Service Delivery Region 3 shall be composed of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale counties;

(4) State Service Delivery Region 4 shall be composed of Butts, Carroll, Coweta, Heard, Lamar, Meriwether, Pike, Spalding, Troup, and Upson counties;

(5) State Service Delivery Region 5 shall be composed of Barrow, Clarke, Elbert, Greene, Jackson, Jasper, Madison, Morgan, Newton, Oconee, Oglethorpe, and Walton counties;

(6) State Service Delivery Region 6 shall be composed of Baldwin, Bibb, Crawford, Houston, Jones, Monroe, Peach, Pulaski, Putnam, Twiggs, and Wilkinson counties;

(7) State Service Delivery Region 7 shall be composed of Burke, Columbia, Glascock, Hancock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Taliaferro, Warren, Washington, and Wilkes counties;

(8) State Service Delivery Region 8 shall be composed of Chattahoochee, Clay, Crisp, Dooly, Harris, Macon, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Sumter, Talbot, Taylor, and Webster counties;

(9) State Service Delivery Region 9 shall be composed of Appling, Bleckley, Candler, Dodge, Emanuel, Evans, Jeff Davis, Johnson, Laurens, Montgomery, Tattnall, Telfair, Toombs, Treutlen, Wayne, Wheeler, and Wilcox counties;

(10) State Service Delivery Region 10 shall be composed of Baker, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell, Thomas, and Worth counties;

(11) State Service Delivery Region 11 shall be composed of Atkinson, Bacon, Ben Hill, Berrien, Brantley, Brooks, Charlton,

Clinch, Coffee, Cook, Echols, Irwin, Lanier, Lowndes, Pierce, Tift, Turner, and Ware counties; and

(12) State Service Delivery Region 12 shall be composed of Bryan, Bulloch, Camden, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, and Screven counties.

(b) This Code section shall not apply to or affect aging program planning and service areas, health districts, or mental health districts. (Code 1981, § 50-4-7, enacted by Ga. L. 1998, p. 1230, § 1; Ga. L. 1999, p. 789, § 3; Ga. L. 2005, p. 143, § 1/SB 144; Ga. L. 2010, p. 451, § 1/HB 1260.)

The 2010 amendment, effective May 24, 2010, in subsection (b), inserted “aging program planning and service areas,” and inserted a comma preceding “or mental”.

CHAPTER 5

DEPARTMENT OF ADMINISTRATIVE SERVICES

Article 1

General Provisions

- Sec.
- 50-5-14. Authorization for Workers' Compensation Trust Fund to retain moneys as reserve; procedures for use of investment moneys.
- 50-5-16. Liability insurance and self-insurance for state authorities; how program funded; incentive programs; incentive programs authorized; deduction of unpaid amounts; reserves.

Article 3

State Purchasing

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

- 50-5-53. Authorization to employ assistants, fix salaries, and make assignments.
- 50-5-60. Preference to supplies, equipment, materials, and agricultural products produced in Georgia generally; determina-

Sec.

- tion as to reasonableness of preference.
- 50-5-60.3. Use of retreaded tires.
- 50-5-60.4. Use of compost and mulch in road building, land maintenance, and land development activities; preference to be given Georgia compost and mulch.
- 50-5-67. Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determination; receiving electronic bids.
- 50-5-69. (Effective until July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.
- 50-5-69. (Effective July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and

Sec.

regulations; applicability to emergency purchases; Purchasing Advisory Council.

50-5-77. Multiyear lease, purchase, or lease purchase contracts; required provisions for contracts; calculation and application of savings or enhanced revenues; external oversight committee; annual report.

50-5-82. "State agency" defined; limitations on contracting for goods; role of Department of Revenue.

50-5-83. Definitions; requirements for state purchasing card program.

PART 3

SMALL BUSINESS ASSISTANCE

50-5-120. (Effective until July 1, 2015) Short title.

Sec.

50-5-120. (Effective July 1, 2015) Short title.

50-5-121. (Effective until July 1, 2015) Definitions.

50-5-121. (Effective July 1, 2015) Definitions.

PART 5

STATE USE COUNCIL

50-5-135. Creation of State Use Council; membership; terms; appointments; compensation; existence.

ARTICLE 1

GENERAL PROVISIONS

50-5-14. Authorization for Workers' Compensation Trust Fund to retain moneys as reserve; procedures for use of investment moneys.

In order to finance the continuing liability established with other agencies of state government, the Workers' Compensation Trust Fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance and all moneys received as interest and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the Workers' Compensation Trust Fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the Workers' Compensation Trust Fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the Workers' Compensation Trust Fund. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal,

in writing, to the state treasurer. (Ga. L. 1972, p. 350, § 1; Ga. L. 2000, p. 1474, § 8; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" twice and substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" three times.

50-5-16. Liability insurance and self-insurance for state authorities; how program funded; incentive programs; incentive programs authorized; deduction of unpaid amounts; reserves.

(a) The commissioner of administrative services may establish a program of liability insurance and self-insurance for state authorities.

(b) State funds may be appropriated for the program, but the commissioner shall charge such premiums, deductibles, and other payments as the commissioner determines necessary or useful. The commissioner is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. From the funds available to the commissioner, the commissioner shall establish such reserves as the commissioner determines necessary, purchase commercial policies, employ consultants, and otherwise administer the program. Any amounts held by the liability insurance or self-insurance funds which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in trust accounts for credit only to the liability insurance and self-insurance funds. The state treasurer shall invest the liability insurance and self-insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the liability insurance and self-insurance funds. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer.

(c) The commissioner may generally provide for insurance or self-insurance under such terms and conditions as he determines, and

he may provide for particular coverages and other terms and conditions of the unique exposures particular to one or more authorities. The commissioner may provide for endorsements for contract liability and, where necessary or convenient to the public functions of an authority, he may also provide for additional insureds.

(d) Where existing programs of insurance and self-insurance have been established among state authorities by contract, the commissioner may arrange with such authorities to replace the existing programs with such programs as he may establish. In doing so he may assume existing and potential liabilities of the established programs. To the extent that funds of the existing programs are not necessary for such purposes, the commissioner may agree to the refund of such funds.

(e) Nothing in this Code section or in any related act of the commissioner or the participating authorities shall be construed as waiving any immunity or privilege of any kind now or hereafter enjoyed by the state or the state authorities, including without limitation defenses under the Eleventh Amendment of the Constitution of the United States, sovereign immunity, or any other legal or factual defense, privilege, or immunity which the state or a participating authority may enjoy or assert. The intent of this authorization is to provide for protection only in the absence of such defenses.

(f) Similarly, nothing in this Code section or in any related act of the commissioner or participating authorities shall pledge or be deemed to pledge the credit of the state. No obligation shall arise beyond the limits of liability established by the commissioner or beyond such other terms and conditions as he may establish, and no obligation shall be imposed or created upon other funds of the state or upon other funds of the participating authorities.

(g) Nothing in the program of insurance or self-insurance shall cause one authority to be liable for claims of another or otherwise expose the assets of one authority to claims of liability respecting another authority. (Code 1981, § 50-5-16, enacted by Ga. L. 1987, p. 176, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1474, § 9; Ga. L. 2008, p. 245, § 7/SB 425; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, in subsection (b), substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” twice and

substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” three times.

ARTICLE 3
STATE PURCHASING

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

50-5-50. Purposes and policies of part.

JUDICIAL DECISIONS

Cited in *Diverse Power, Inc. v. Jackson*,
285 Ga. 340, 676 S.E.2d 204 (2009).

50-5-53. Authorization to employ assistants, fix salaries, and make assignments.

Subject to applicable rules of the State Personnel Board, the Department of Administrative Services may appoint as many assistants and employees, and fix their salaries, as are essential to the state's interest in the execution of the terms and provisions of this part. Assignment of an assistant or assistants to any of the departments, institutions, or agencies of the state may be made by the Department of Administrative Services. It shall be unlawful for any other agency of the state to employ any person for the purposes set out in this part unless that person complies with the minimum requirements for purchasing personnel established by the Department of Administrative Services. (Ga. L. 1937, p. 503, § 17; Ga. L. 1939, p. 160, § 8; Ga. L. 2005, p. 117, § 12/HB 312; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-99/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" in the first sentence, and deleted "State Personnel Administration in conjunction with the" preceding "Department of Administrative Services" in the last sentence.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

50-5-54. Rules and regulations to be made and published.

JUDICIAL DECISIONS

Manual set out procedures. — Legislature did not have to include an express

exhaustion requirement in the Georgia's State Purchasing Act, O.C.G.A. § 50-5-50

et seq., because the Georgia Vendor Manual, promulgated pursuant to O.C.G.A. § 50-5-54, itself set forth the regulations, including mandatory protest procedures, that were necessary for carrying out the Act's purposes. *Diverse Power, Inc. v. Jackson*, 285 Ga. 340, 676 S.E.2d 204 (2009).

Timely bid protest. — There was nothing about the ten-day protest window

of Dep't Admin. Serv. Ga. Vendor Manual § 3.8(2) that prevented a utility from filing a timely bid protest, as the utility had not been required to obtain more information regarding any alleged wrongdoing by the awarding agency before filing an initial protest to the award of the contract to the utility's rival. *Diverse Power, Inc. v. Jackson*, 285 Ga. 340, 676 S.E.2d 204 (2009).

50-5-60. Preference to supplies, equipment, materials, and agricultural products produced in Georgia generally; determination as to reasonableness of preference.

(a) The state and any department, agency, or commission thereof, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(b) Vendors resident in the State of Georgia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state, or by any local government of such state, to vendors resident therein over vendors resident in the State of Georgia.

(c) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the state or its department, agency, or commission shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. The state or its department, agency, or commission shall not divide a contract or purchase which exceeds \$100,000.00 for the purpose of avoiding the requirements of this subsection.

(d) Nothing in this Code section shall negate the requirements of Code Section 50-5-73. (Ga. L. 1933, p. 1178; Code 1933, § 40-1903; Ga. L. 1937, p. 503, § 11; Ga. L. 1990, p. 1466, § 1; Ga. L. 2009, p. 204, § 3/SB 44; Ga. L. 2012, p. 1098, § 1/SB 358.)

The 2012 amendment, effective July 1, 2012, inserted “, or by any local government of such state,” near the end of subsection (b).

50-5-60.3. Use of retreaded tires.

All state agencies, departments, and authorities shall replace original truck tires of over 16 inch rim size used on nonsteering axles with retreaded tires or subscribe to a retread service as replacement is necessary and as stockpiled tires are depleted; provided, however, that nothing in this Code section shall be construed so as to discourage the use of retreaded tires on other size rims or other types of vehicles if an agency, department, or authority deems such use to be economical, feasible, and desirable. Retreaded tires shall not be used on an official state vehicle which is used to respond to public safety emergencies unless the use of retreaded tires on such a vehicle is expressly approved by the agency, department, or authority responsible for the operation of the vehicle. (Code 1981, § 50-5-60.3, enacted by Ga. L. 1993, p. 531, § 3; Ga. L. 2010, p. 105, § 1-2/HB 981.)

The 2010 amendment, effective July 1, 2010, added the last sentence.

Editor’s notes. — Ga. L. 2010, p. 105, § 3-1, not codified by the General Assembly, provides that the 2010 amendment by that Act shall stand repealed on June 30, 2013.

50-5-60.4. Use of compost and mulch in road building, land maintenance, and land development activities; preference to be given Georgia compost and mulch.

(a) All state agencies, departments, and authorities responsible for the maintenance of public lands shall give preference to the use of compost and mulch in all road building, land maintenance, and land development activities. Preference shall be given to compost and mulch made in the State of Georgia from organics which are source separated from the state’s nonhazardous solid waste stream.

(b) The Department of Agriculture shall develop and publish in print or electronically standards for the compost and mulch required by subsection (a) of this Code section by January 1, 1994. (Code 1981, § 50-5-60.4, enacted by Ga. L. 1993, p. 531, § 3; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in subsection (b).

50-5-67. Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determination; receiving electronic bids.

(a) Except as otherwise provided in this Code section, contracts exceeding \$100,000.00 shall be awarded by competitive sealed bidding. If the total requirement of any given commodity will involve an expenditure in excess of \$250,000.00, sealed bids shall be solicited by advertisement in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be solicited by advertisement in a newspaper of state-wide circulation at least once and at least 15 calendar days, except for construction projects which shall have 30 calendar days allowed, prior to the date fixed for opening of the bids and awarding of the contract. Other methods of advertisement, however, may be adopted by the Department of Administrative Services when such other methods are deemed more advantageous for the particular item to be purchased. In any event, it shall be the duty of the Department of Administrative Services to solicit sealed bids from reputable owners of supplies in all cases where the total requirement will exceed \$100,000.00. When it appears that the use of competitive sealed bidding is either not justified or not advantageous to the state, a contract may be entered into by competitive sealed proposals, subject to the following conditions:

(1) This method of solicitation shall only be used after a written determination by the Department of Administrative Services that the use of competitive sealed bidding is not justified or is not advantageous to the state;

(2) Proposals shall be solicited through a request for proposals;

(3) Adequate public notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding;

(4) A register of proposals shall be prepared and made available for public inspection;

(5) The request for proposals shall state the relative importance of price and other evaluation factors;

(6) As provided in the request for proposals and under regulations to be developed by the Department of Administrative Services, discussions may be conducted with qualified offerors who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity

for discussion and clarification of proposals. After such clarifications, revisions may be permitted to technical proposals and price proposals prior to award for the purpose of obtaining best and final offers. The Department of Administrative Services is authorized to solicit multiple revisions to price proposals for the purpose of obtaining the most advantageous proposal to the state. In conducting discussions or soliciting any revisions, there shall be no disclosure of any information contained in proposals submitted by competing offerors. However, this prohibition on disclosure of information shall not prohibit the Department of Administrative Services from disclosing to competing offerors any preliminary rankings and scores of competing offerors' proposals during the course of any negotiations or revisions of proposals other than with respect to the procurement of construction contracts; and

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b)(1) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, equipment, or services other than professional and personal employment services made under this part shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, equipment, or services as specified in the solicitation document. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services which shall prescribe, among other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the specification prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(2)(A) As used in this paragraph, the term:

(i) "Commercial use applications" means self-propelled, self-powered, or pull-type equipment and machinery, including

diesel engines. The term shall not include motor vehicles requiring registration and certificate of title or equipment that is considered consumer goods, as that term is defined in Code Section 11-9-102.

(ii) "Multiple award schedule contract" means a contract that allows multiple vendors to be awarded a state contract for goods or services by providing catalogues of equipment and attachments to eligible purchasers including state agencies, departments, institutions, public school districts, and political subdivisions. Multiple award schedule contract bids shall be evaluated based upon a variety of factors, including but not limited to discounts, total life costs, service, warranty, machine performance and durability, resale value, product support, and past vendor performance. Multiple award schedule contracts shall allow multiple vendors to bid and be awarded a contract based upon the value of their products and demonstrated results in competitive pricing, product updates, transparency, administrative savings, expedited procurement, and flexibility for state purchasers.

(B) When the commissioner of administrative services determines it to be in the best interest of the state, a multiple award schedule contract may be let for the purchase of equipment used for commercial use applications. All bidders for contracts for the purchase of equipment for commercial use applications shall be required to submit a complete bid package and be the authorized dealer or vendor for a leading manufacturer of equipment used for commercial use applications. Bidders may add additional equipment with a guaranteed minimum discount off the manufacturer's suggested consumer list price in the bid in order to increase the options available to the state.

(C) Nothing in this paragraph shall limit multiple award schedule contracts to commercial use applications.

(c)(1)(A) When bids received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible bid exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this Code section, provided that each responsible bidder who submitted such a bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the bids received are noncompetitive or the lowest responsible bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

(B) With respect to procurement for construction contracts, if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, a contract may be negotiated with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(2) When proposals received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible proposal exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive proposals, a contract may be negotiated pursuant to this Code section, provided that each responsible offeror who submitted such a proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the proposals received are noncompetitive or the lowest responsible proposal exceeds available funds, any contract award made pursuant to this paragraph shall be made to the offeror whose negotiated proposal is most advantageous to the state according to the evaluation criteria in the request for proposals rather than to the offeror whose negotiated proposal offers the lowest price, provided that the negotiated price of the most advantageous proposal is lower than the price of the rejected responsible proposal with the lowest price under the original solicitation.

(d)(1) Except as otherwise provided for in this part, the Department of Administrative Services shall publish in print or electronically, prior to award or letting of the contracts, notice of its intent to award a contract to the successful bidder or offeror on public display in a conspicuous place in the department's office, on the Georgia Procurement Registry, or both so that it may be easily seen by the public. The public notice on public display shall also state the price or the amount for which the contract may be awarded, the commodities or services to be covered by the contract which may be awarded, and the names of all persons whose bids, offers, or proposals were rejected by the department, together with a statement giving the reasons for the rejection.

(2) Every bid or proposal conforming to the terms of the advertisement provided for in this Code section, together with the name of the bidder, shall be recorded, and all such records with the name of the successful bidder or offeror indicated thereon shall, within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror, be subject to public inspection upon request.

(3) The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish the name

of the successful bidder or offeror on public display in a conspicuous place in the department's office or on the Georgia Procurement Registry so that it may be easily seen by the public. The public notice on public display shall also show the price or the amount for which the contract was let and the commodities covered by the contract. The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish on public display the names of all persons whose bids, offers, or proposals were rejected by it, together with a statement giving the reasons for such rejection.

(4) The Department of Administrative Services shall canvass the bids, offers, or proposals and award the contract according to the terms of this part. The Department of Administrative Services shall prepare a register of bids, offers, or proposals which will become available for public inspection upon request within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror. The bids, offers, or proposals shall not be subject to public disclosure until after the issuance of the public notice of intent to award a contract to the successful bidder or offeror except that audited financial statements not otherwise publicly available but required to be submitted in the bid, offer, or proposal shall not be subject to public disclosure.

(5) Records related to the competitive bidding and proposal process which, if disclosed prior to the issuance of the public notice of intent to award would undermine the public purpose of obtaining the best value for this state, shall not be subject to public disclosure until after the department's issuance of its public notice of intent to award a contract to the successful bidder or offeror. Such records include but are not limited to cost estimates, bids, proposals, evaluation criteria, vendor evaluations, negotiation documents, offers and counter-offers, and records revealing preparation for the procurement.

(6) A proper bond for the faithful performance of any contract shall be required of the successful bidder or offeror in the discretion of the Department of Administrative Services. After the contracts have been awarded, the Department of Administrative Services shall certify to the offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state the sources of the supplies and the contract price of the various supplies, materials, services, and equipment so contracted for.

(e) On all bids or proposals received or solicited by the Department of Administrative Services, by any office, agency, department, board, bureau, commission, institution, or other entity of the state or by any person in behalf of any office, agency, department, board, bureau, commission, institution, or other entity of the state except in cases provided for in Code Section 50-5-58, the following certificate of independent price determination shall be used:

"I certify that this bid, offer, or proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid, offer, or proposal for the same materials, supplies, services, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, offer, or proposal and certify that I am authorized to sign this bid, offer, or proposal for the bidder or offeror."

(f) Notwithstanding any other provision of this article, the commissioner of administrative services is authorized to promulgate rules and regulations to govern auctions conducted by state agencies in which vendors' prices are made public during the bidding process to enable the state agency or agencies to seek a lower price. This auction bidding process will continue until the lowest price is obtained within the auction's time limit. This auction bidding process shall not be used to procure construction services or for any contract for goods or services valued at less than \$100,000.00.

(g) Any reference in this article to sealed bids or sealed proposals shall not preclude the Department of Administrative Services from receiving bids and proposals by way of the Internet or other electronic means or authorizing state agencies from receiving bids and proposals by way of the Internet or other electronic means; provided, however, any bids or proposals received by any state agency by way of any electronic means must comply with security standards established by the Georgia Technology Authority. (Ga. L. 1937, p. 503, § 6; Ga. L. 1939, p. 160, § 3; Ga. L. 1978, p. 1054, §§ 1, 2; Ga. L. 1979, p. 659, §§ 4, 5; Ga. L. 1980, p. 90, § 2; Ga. L. 1991, p. 1380, § 1; Ga. L. 1996, p. 885, § 5; Ga. L. 1998, p. 1372, § 1; Ga. L. 2001, p. 792, § 1; Ga. L. 2003, p. 605, § 1; Ga. L. 2005, p. 117, § 13/HB 312; Ga. L. 2008, p. 230, §§ 3, 4/SB 175; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 1178, § 1/SB 492; Ga. L. 2012, p. 1350, § 8B/HB 1067.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence of paragraph (d)(1).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, designated the existing provisions of sub-

section (b) as present paragraph (b)(1); substituted "services which shall" for "services, which rules and regulations shall" in the next-to-last sentence of paragraph (b)(1); and added paragraph (b)(2). The second 2012 amendment, effective July 1, 2012, made identical changes.

50-5-69. (Effective until July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

(a) (For effective date, see note.) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than \$25,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of the Technical College System of Georgia or his or her designee; the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the commissioner of community health or his or her designee; the commissioner of public health or his or her designee; the commissioner of behavioral health and developmental disabilities or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate rules and regulations applicable to the department's responsibility to manage the state's procurement system. It shall be the responsibility of each agency, department, board, commission, authority, and council to report to the department its bid opportunities in a manner prescribed by the Department of Administrative Services. The commissioner of administrative services is authorized and directed to promulgate rules and regulations to carry out this responsibility and shall determine the

most economical method to conduct public notification of such bid opportunities.

(c) The Department of Administrative Services is authorized to permit departments, institutions, and agencies of state government to utilize a procurement card that will electronically pay and monitor payments by state institutions pursuant to subsection (a) of this Code section subject to approval of the State Depository Board pursuant to the State Depository Board's authority to prescribe cash management policies and procedures for state agencies under Code Section 50-17-51. All purchases made through procurement cards shall be included on a monthly summary report to be prepared by each state department, institution, and agency in a form to be approved by the Department of Administrative Services.

(d) The commissioner of administrative services shall promulgate rules and regulations necessary to carry out the intent of this Code section.

(e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases. (Ga. L. 1976, p. 752, § 1; Ga. L. 1980, p. 90, § 4; Ga. L. 1983, p. 520, § 1; Ga. L. 1996, p. 885, § 6; Ga. L. 1998, p. 1372, § 2; Ga. L. 2001, p. 792, § 2; Ga. L. 2005, p. 117, § 13A/HB 312; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 21/SB 244; Ga. L. 2011, p. 705, § 5-28/HB 214; Ga. L. 2012, p. 760, § 1-1/HB 863; Ga. L. 2012, p. 775, § 50/HB 942.)

Delayed effective date. — Code Section 50-5-69 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2010 amendment, effective July 1, 2010, inserted “the commissioner of behavioral health and developmental disabilities or his or her designee,” near the end of the next-to-last sentence of subsection (a).

The 2011 amendment, effective July 1, 2011, inserted “the commissioner of public health or his or her designee” near the end of the next-to-last sentence of subsection (a).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012,

and repealed effective July 1, 2015, in subsection (a), substituted “\$25,000.00” for “\$5,000.00” in the first sentence, and substituted “the Technical College System of Georgia” for “technical and adult education” in the third sentence. The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “the commissioner of the Technical College System of Georgia” for “the commissioner of technical and adult education” in subsection (a), and revised language in the last sentence of subsection (c).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

50-5-69. (Effective July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

(a) (For effective date, see note.) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than \$5,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of the Technical College System of Georgia or his or her designee; the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the commissioner of community health or his or her designee; the commissioner of public health or his or her designee; the commissioner of behavioral health and developmental disabilities or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate rules and regulations applicable to the department's responsibility to manage the state's procurement system. It shall be the responsibility of each agency, department, board, commission, authority, and council to report to the department its bid opportunities in a manner prescribed by the Department of Administrative Services. The commissioner of administrative services is authorized and directed to promulgate rules and regulations to carry out this responsibility and shall determine the

most economical method to conduct public notification of such bid opportunities.

(c) The Department of Administrative Services is authorized to permit departments, institutions, and agencies of state government to utilize a procurement card that will electronically pay and monitor payments by state institutions pursuant to subsection (a) of this Code section subject to approval of the State Depository Board pursuant to the State Depository Board's authority to prescribe cash management policies and procedures for state agencies under Code Section 50-17-51. All purchases made through procurement cards shall be included on a monthly summary report to be prepared by each state department, institution, and agency in a form to be approved by the Department of Administrative Services.

(d) The commissioner of administrative services shall promulgate rules and regulations necessary to carry out the intent of this Code section.

(e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases. (Ga. L. 1976, p. 752, § 1; Ga. L. 1980, p. 90, § 4; Ga. L. 1983, p. 520, § 1; Ga. L. 1996, p. 885, § 6; Ga. L. 1998, p. 1372, § 2; Ga. L. 2001, p. 792, § 2; Ga. L. 2005, p. 117, § 13A/HB 312; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 21/SB 244; Ga. L. 2011, p. 705, § 5-28/HB 214; Ga. L. 2012, p. 760, §§ 1-1, 2-1/HB 863; Ga. L. 2012, p. 775, § 50/HB 942.)

Delayed effective date. — Code Section 50-5-69 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, and repealed effective July 1, 2015, in subsection (a), substituted "\$25,000.00" for "\$5,000.00" in the first sentence, and

substituted "the Technical College System of Georgia" for "technical and adult education" in the third sentence. The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "the commissioner of the Technical College System of Georgia" for "the commissioner of technical and adult education" in subsection (a), and revised language in subsection (c).

50-5-77. Multiyear lease, purchase, or lease purchase contracts; required provisions for contracts; calculation and application of savings or enhanced revenues; external oversight committee; annual report.

(a) As used in this Code section, the term:

(1) "Agency" means every state department, agency, board, bureau, and commission including without limitation the Board of Regents of the University System of Georgia.

(2) "Authority" means the Georgia Environmental Finance Authority.

(3) "Benefits based funding project" means any governmental improvement project in which payments to vendors depend upon the realization of specified savings or revenue gains attributable solely to the improvements, provided that each benefits based funding project is structured as follows:

(A) The vendor guarantees that the improvements will generate actual and quantifiable savings or enhanced revenues;

(B) The agency develops a measurement tool for calculating the savings or enhanced revenues realized from the project; and

(C) The funding for the project shall be attributable solely to its successful implementation for the period specified in the contract, or, where applicable, from sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

(4) "External oversight committee" means a committee composed of the executive director of the Georgia Technology Authority, the commissioner of administrative services, the director of the Office of Planning and Budget, the state auditor, the state accounting officer, the Governor's designee, the chairperson of the House Committee on Appropriations, and the chairperson of the Senate Committee on Appropriations.

(5) "Measurement tool" means the formula used to measure the actual savings or enhanced revenues and includes a means for distinguishing enhanced revenue or savings from normal activities, including the possibility of no savings or revenue growth or an increased expenditure or decline in revenue. Baseline parameters must be defined based on historical costs or revenues for a minimum of one year. The measurement tool shall use the baseline parameters to forecast savings or enhanced revenues and to determine the overall benefits and fiscal feasibility of the proposed project.

(6) "Special dedicated fund" means any fund established pursuant to this Code section from which the vendor or vendors are compensated as part of a benefits based funding project. The moneys in the special dedicated fund shall be deemed contractually obligated and shall not lapse at the end of each fiscal year.

(b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of equipment, goods, materials, personal property, improvements to real property, services, construction services, renovation services, and supplies as benefits based funding projects; provided, however, that a condition precedent to the award of the contract is a competitive solicitation in compliance with any applicable purchasing laws now or hereafter enacted, including without limitation the provisions of this

chapter and Chapter 25 of this title; and provided, further, that the contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the agency at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

(2) The contract may be renewed only by a positive action taken by the agency;

(3) In addition to any other remedies available to the agency, the contract shall provide that at such time as the agency determines that actual savings or incremental revenue gains are not being generated to satisfy the obligations under the contract, the vendor shall be required to remedy the deficit in actual savings or incremental revenue gains by remitting to the state an amount equal to the deficit. The vendor shall also be required to provide at contract execution and upon execution of any contract renewals an energy savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency equal to the value of the project's annual savings or revenue gains;

(4) The contract shall state the total obligation of the agency for repayment for the fiscal year of execution and shall state the total obligation for repayment which will be incurred in each fiscal year renewal term, if renewed; and

(5) The term of the contract, including any renewal periods, may not extend past the date that is ten years from the date of the completion of the project that is the subject of the contract.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (b) of this Code section shall be deemed to obligate the agency only for those sums payable during the fiscal year of execution or, in the event of a renewal by the agency, for those sums payable in the individual fiscal year renewal term and only to the extent that savings or enhanced revenues are attributable to the benefits based funding project calculated using the measurement tool and, where applicable, sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

(e) Any such contract may provide for the payment by the agency of interest or the allocation of a portion of the contract payment to

interest, provided that the contract is in compliance with this Code section.

(f) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, periodically calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project. To the extent that savings or enhanced revenues are realized, the agency shall transfer from its budget into the special dedicated fund an amount up to but not to exceed the amount owed on the contract for the then current fiscal year term's obligation to provide for payments, or, where applicable, sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains may be transferred to the special dedicated fund by the agency.

(g) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project during the then current fiscal year at least 30 days prior to the end of the then current fiscal year. If the agency renews the contract and to the extent that savings or enhanced revenues are realized in excess of the amount due on the contract in the then current fiscal year term, the agency shall transfer prior to the end of the then current fiscal year from its budget into the special dedicated fund an amount up to but not to exceed the next fiscal year's obligation to provide for future payments.

(h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys remaining in the special dedicated fund shall be deposited in the general fund of the state.

(i) Each agency is authorized to accept title to property subject to the benefits based funding contract and is authorized to transfer title back to the vendor in the event the contract is not fully consummated.

(j) Payments to which a vendor is entitled under the contract may not be assigned without the approval of the agency. In its discretion, the agency may agree that the vendor may assign the payments to which it is entitled under the benefits based funding contract to a third party, provided that the agency will be made party to the assignment agreement and that any such assignment agreement will not alter the obligations of the agency under the contract, specifically including, but not limited to, the provisions required by subsection (b) of this Code section; and provided that the vendor, at the time of the request that the agency agree to an assignment of payments, must provide to the agency an energy savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency

equal to the guaranteed savings for the total project duration including any anticipated renewal periods and the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency must remain in force for the entire project duration including any renewal periods. As savings are realized and verified by the measurement tool during the term of the contract including renewal periods, the value of the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency may decrease proportionately.

(k) The external oversight committee shall have the responsibility to direct the authority to perform reviews and to recommend approval of all benefits based funding projects advising:

- (1) The overall feasibility of the benefits based funding project;
- (2) The measurement tool;
- (3) The projected savings or enhanced revenues; and
- (4) The dollars to be set aside for vendor payments.

(l) At the recommendation of the authority, each benefits based funding project and the proposed contract shall be approved by the external oversight committee prior to execution of the contract and shall be subject to further review by the authority or the external oversight committee at any time.

(m) Each agency shall prepare and certify an annual report on all contracts entered into pursuant to this Code section, describing the benefits based funding projects, the progress of the projects, the consolidated savings or enhanced revenues of such projects, and such other information as may be relevant. This annual report shall be sent to the authority on behalf of the external oversight committee at a date determined by the authority. The authority shall review and consolidate all agency reports and submit a consolidated report to the Governor, the General Assembly, and the external oversight committee. (Code 1981, § 50-5-77, enacted by Ga. L. 2003, p. 439, § 1; Ga. L. 2010, p. 1091, § 1/SB 194.)

The 2010 amendment, effective July 1, 2010, rewrote this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “Georgia

Environmental Finance Authority” was substituted for “Georgia Environmental Facilities Authority” in paragraph (a)(2).

50-5-82. “State agency” defined; limitations on contracting for goods; role of Department of Revenue.

(a) As used in this Code section, the term “state agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government. “State agency” shall not include any county, municipality, or local or regional governmental authority.

(b) On or after May 13, 2004, the Department of Administrative Services and any other state agency to which this article applies shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding \$100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under Chapter 8 of Title 48 on its sales delivered to Georgia.

(c) The Department of Administrative Services and any other state agency may contract for goods or services, or both, with a source prohibited under subsection (b) of this Code section in the event of an emergency or where the nongovernmental vendor is the sole source of such goods or services or both.

(d) The determination of whether a vendor is a prohibited source shall be made by the Department of Revenue, which shall notify the Department of Administrative Services and any other state agency of its determination within three business days of a request for such determination.

(e) Prior to awarding a contract, the Department of Administrative Services and any other state agency to which this article applies shall provide the Department of Revenue the name of the nongovernmental vendor awarded the contract, the name of the vendor’s affiliate, and the certificate of registration number as provided for under Code Section 48-8-59 for the vendor and affiliate of the vendor. (Code 1981, § 50-5-82, enacted by Ga. L. 2004, p. 424, § 1; Ga. L. 2010, p. 662, § 32/HB 1221.)

The 2010 amendment, effective January 1, 2011, deleted “paragraph (3) of” preceding “Code Section 48-8-2” near the end of subsection (b).

50-5-83. Definitions; requirements for state purchasing card program.

(a) As used in this Code section, the term:

(1) “Agency” or “agencies” means any entity of this state, including any department, agency, division, council, bureau, board, commission, public corporation, or authority; provided, however, that such term shall not mean a political subdivision of this state.

(2) "Department" means the Department of Administrative Services.

(3) "Purchasing card" means a credit or debit card issued by a credit card company, bank, or other financial institution and provided by the State of Georgia or any of its agencies under the State of Georgia Purchasing Card Program to state employees for the purpose of making purchases on behalf of such agencies or the state.

(b) Any purchasing card program established by the department or by any other agency shall conform to the following requirements:

(1) Purchasing cards shall only be issued to state employees whose job duties require the use of a purchasing card;

(2) Each agency that allows the use of purchasing cards by its employees shall develop policies and procedures consistent with guidelines developed by the department pursuant to this Code section to identify those job positions within each agency that would require the use of a purchasing card;

(3) Each employee receiving a purchasing card shall be required to sign an ethical behavior agreement for the use of the card which shall be developed by the department;

(4) Each agency that allows its employees to use purchasing cards shall provide for the review of all purchases on such cards, shall maintain receipts for each purchase, and shall maintain a log showing each purchase, the relevant vendor's name, the item purchased, the date of the purchase, the amount of the purchase, the name of the employee making the purchase, and any other information that shall be specified by the department;

(5) Purchases made on purchasing cards shall be reviewed and approved by supervisory personnel at least quarterly;

(6) Purchasing cards shall not be used for items over \$5,000.00 unless the item is:

(A) Purchased pursuant to a valid state contract; and

(B) Purchased in compliance with state procurement policy;

(7) Purchasing cards shall not be used to purchase gift cards;

(8) Purchasing cards shall not be used to purchase alcoholic beverages, tobacco products, or personal items that are not job related, and state contracts for purchasing cards shall contain such prohibitions on the use of such purchasing cards;

(9) The department shall develop a training manual on the use of purchasing cards which shall instruct users of purchasing cards on

the maximum value utilization of such purchasing cards and employees who use such purchasing cards shall comply with the provisions of such manual;

(10) Agencies shall review not less than annually all purchasing cards issued to their employees and shall eliminate purchasing cards for employees who demonstrate consistently low usage of such purchasing cards;

(11) Agencies which have more than 100 purchasing cards issued to employees shall establish goals to reduce such number of purchasing cards;

(12) Employees hired for job positions for which purchasing cards are issued shall be subjected to criminal background checks before hiring and a credit check shall be completed by the hiring agency on all employees to whom a purchasing card is issued prior to issue;

(13) Purchasing cards shall be issued only to employees of agencies and no purchasing cards shall be issued to employees of foundations associated with agencies;

(14) Each purchase made with a purchasing card shall be accompanied by a receipt or other documentation listing each item purchased, the purchase price for each item, and any taxes, fees, or other amounts paid in connection with such purchase; and

(15) With respect to any purchase made with a purchasing card, if the employee to whom such card was issued does not provide documentation meeting the requirements of paragraph (14) of this subsection to his or her supervisor for recording on the purchasing log required to be maintained as provided in paragraph (4) of this subsection, such employee shall be personally responsible for such purchase.

(c) Any employee of an agency who knowingly:

(1) Uses a purchasing card for personal gain;

(2) Purchases items on such purchasing card that are not authorized for purchase by such employee;

(3) Purchases items in violation of this Code section; or

(4) Retains for such employee's personal use a rebate or refund from a vendor, bank, or other financial institution for a purchase or the use of a purchasing card

shall be subject to immediate termination of employment, restitution for the amount of the improper purchases, and criminal prosecution. Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly

purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years' imprisonment, a fine not to exceed \$50,000.00, or both.

(d) An employee's supervisor who knowingly intentionally, willfully, wantonly, or recklessly allows or who conspires with an employee who is issued a purchasing card to violate subsection (c) of this Code section shall be subject to immediate termination of employment and criminal prosecution. Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years' imprisonment, a fine not to exceed \$50,000.00, or both.

(e) The department is authorized to promulgate such rules and regulations as necessary to implement this Code section. (Code 1981, § 50-5-83, enacted by Ga. L. 2008, p. 776, § 2/HB 1113; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2011, p. 387, § 1/HB 290.)

The 2011 amendment, effective July 1, 2011, added paragraph (a)(1); redesignated former paragraphs (a)(1) and (a)(2) as present paragraphs (a)(2) and (a)(3), respectively; in paragraph (a)(3), deleted "departments or" preceding "agencies" in two places; in subsection (b), substituted "agency" for "department or agency of the state" throughout; substituted "Agencies" for "Departments and agencies of the state" at the beginning of paragraphs (b)(10) and (b)(11); deleted "by at least 10 percent by December 31, 2009" following "cards" at the end of paragraph (b)(11); deleted "department or" following "hiring"

in paragraph (b)(12); in two places in paragraph (b)(13), deleted "departments and" preceding "agencies" and deleted "of the state" following "agencies"; and substituted "employee of an agency" for "employee of a department or agency of the state" in the introductory language of paragraph (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 387, § 2, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to offenses committed on or after July 1, 2011.

PART 3

SMALL BUSINESS ASSISTANCE

50-5-120. (Effective until July 1, 2015) Short title.

This part shall be known and may be cited as "The Small Business Assistance Act of 2012." (Ga. L. 1975, p. 1619, § 1; Ga. L. 2012, p. 760, § 1-2/HB 863.)

Delayed effective date. — Code Section 50-5-120 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July 1, 2012, and repealed effective July 1, 2015, substituted “2012” for “1975” in this Code section.

50-5-120. (Effective July 1, 2015) Short title.

This part shall be known and may be cited as “The Small Business Assistance Act of 1975.” (Ga. L. 1975, p. 1619, § 1; Ga. L. 2012, p. 760, §§ 1-2, 2-2/HB 863.)

Delayed effective date. — Code Section 50-5-120 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July

1, 2012, and repealed effective July 1, 2015, substituted “2012” for “1975” in this Code section.

Editor’s notes. — Ga. L. 2012, p. 760, § 2-2/HB 863, effective July 1, 2015, reenacted this Code section without change.

50-5-121. (Effective until July 1, 2015) Definitions.

For the purposes of this part, the term:

(1) “Department” means the Department of Administrative Services.

(2) “Georgia resident business” means any business that regularly maintains a place from which business is physically conducted in Georgia for at least one year prior to any bid or proposal to the state or a new business that is domiciled in Georgia and which regularly maintains a place from which business is physically conducted in Georgia; provided, however, that a place from which business is conducted shall not include a post office box, a leased private mailbox, site trailer, or temporary structure.

(3) “Small business” means a Georgia resident business which is independently owned and operated. In addition, such business must have either fewer than 300 employees or less than \$30 million in gross receipts per year. (Ga. L. 1975, p. 1619, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 2012, p. 760, § 1-3/HB 863.)

Delayed effective date. — Code Section 50-5-121 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July 1, 2012, and repealed effective July 1,

2015, added paragraph (2); redesignated former paragraph (2) as present paragraph (3); and, in paragraph (3), inserted “Georgia resident” in the first sentence, and in the second sentence, substituted “300” for “100” and “\$30 million” for “\$1 million”.

50-5-121. (Effective July 1, 2015) Definitions.

For the purposes of this part, the term:

(1) “Department” means the Department of Administrative Services.

(2) “Small business” means a business which is independently owned and operated. In addition, such business must have either fewer than 100 employees or less than \$1 million in gross receipts per year. (Ga. L. 1975, p. 1619, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 2012, p. 760, §§ 1-3, 2-3/HB 863.)

Delayed effective date. — Code Section 50-5-121 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July 1, 2012, and repealed effective July 1, 2015, added paragraph (2); redesignated former paragraph (2) as present para-

graph (3); and, in paragraph (3), inserted “Georgia resident” in the first sentence, and in the second sentence, substituted “300” for “100” and “\$30 million” for “\$1 million”.

Editor’s notes. — Ga. L. 2012, p. 760, § 2-3, effective July 1, 2015, reenacted this Code section without change.

PART 5

STATE USE COUNCIL

50-5-135. Creation of State Use Council; membership; terms; appointments; compensation; existence.

(a) There is created the State Use Council, hereafter referred to as the council. The council shall be composed of 16 members as follows:

(1) The commissioner of administrative services or his or her designee;

(2) The commissioner of human services or his or her designee;

(2.1) The commissioner of behavioral health and developmental disabilities or his or her designee;

(3) The commissioner of community affairs or his or her designee;

(4) The commissioner of corrections or his or her designee;

(5) Five members appointed by the Governor who shall represent the business community of the state;

(6) Three members appointed by the Governor who shall represent a broad spectrum of persons with disabilities; and

(7) Three members appointed by the Governor who shall represent the interest of organizations representative of persons with disabilities.

(b) Initially, the eleven members appointed pursuant to paragraphs (5) through (7) in subsection (a) of this Code section shall serve staggered terms of office as follows: four members for two years, four members for three years, and three members for four years. Thereafter, each member shall serve for a term of four years. Such members shall serve until the appointment and qualification of their successors. The members appointed by the Governor shall be selected from the state at large but shall be representative of all of the geographic areas of the state.

(c) All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the unexpired term. The council shall elect its own officers. No vacancy on the council shall impair the right of the quorum to exercise all rights and perform all duties of the council.

(d) The members of the council shall receive no compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses, including travel and any other expenses incurred in the performance of their duties. Reimbursement for travel by a personal motor vehicle shall be made in the same manner and subject to the same limitations as provided for state employees under Code Section 50-19-7.

(e) The council shall have perpetual existence. Any change in name or composition of the council shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part. (Code 1981, § 50-5-135, enacted by Ga. L. 1993, p. 1736, § 2; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 22/SB 244.)

The 2010 amendment, effective July 1, 2010, in subsection (a), substituted “16 members” for “15 members” near the end of the introductory paragraph and added paragraph (a)(2.1); and, in the first sen-

tence of subsection (b), substituted “eleven members” for “nine members” near the beginning and substituted “four members” for “three members” in two places near the end.

CHAPTER 5A

OFFICE OF STATE TREASURER

Sec.
50-5A-1. Office of the State Treasurer created; state treasurer appointed.

Sec.
50-5A-2. State treasurer required to give bond; conditions.
50-5A-3. Property of state treasurer lia-

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| <p>Sec. ble for faithful performance; lien in favor of state.</p> <p>50-5A-4. (Effective until January 1, 2013. See note.) Bond to be recorded and filed; certified copy admissible in evidence.</p> <p>50-5A-4. (Effective January 1, 2013. See note.) Bond to be recorded and filed.</p> <p>50-5A-5. Renewal of bond when insufficient; vacancy in office upon refusal to renew bond; appointment to fill vacancy.</p> <p>50-5A-6. Execution instanter against state treasurer when liable to state.</p> | <p>Sec.</p> <p>50-5A-7. Duties of Office of the State Treasurer generally; investments through treasurer.</p> <p>50-5A-9. Assignment to Department of Administrative Services for administrative purposes.</p> <p>50-5A-10. Transfer of powers and duties from former Office of Treasury and Fiscal Services; Georgia State Financing and Investment Commission; state treasurer.</p> <p>50-5A-11. Records not constituting public records.</p> |
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Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

50-5A-1. Office of the State Treasurer created; state treasurer appointed.

There is created the Office of the State Treasurer. The state treasurer shall be both appointed and removed by the State Depository Board and shall be in the unclassified service. The state treasurer shall hire the personnel for the office and shall supervise, direct, account for, organize, plan, and execute the functions vested in the office. (Ga. L. 1972, p. 1015, § 408A; Code 1981, § 50-5-2; Code 1981, § 50-5A-1, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in the first sentence, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the second sentence, substituted “state

treasurer” for “director” in the third sentence, and deleted the former last sentence, which read: “Any reference in this chapter to the ‘director’ shall mean the director of the Office of Treasury and Fiscal Services.”

50-5A-2. State treasurer required to give bond; conditions.

The state treasurer shall post bond to the state in the sum of \$200,000.00 with a bonding company duly licensed to do business in the state and approved by the Governor, the annual premium of the bond to be paid from funds appropriated to the Office of the State Treasurer. The bond shall be conditioned as follows:

(1) That the state treasurer faithfully discharge, execute, and perform all and singular the duties required of him or her by virtue of the office and the Constitution and laws of this state;

(2) That the state treasurer faithfully account for and pay over all state moneys received by him or her from time to time by virtue of the office; and

(3) That the state treasurer safely deliver to his or her successor all records, moneys, vouchers, accounts, and effects whatsoever belonging to the office. (Orig. Code 1863, § 87; Code 1868, § 84; Code 1873, § 90; Ga. L. 1876, p. 126, §§ 2, 4; Code 1882, §§ 90, 91b; Civil Code 1895, §§ 188, 190; Civil Code 1910, §§ 217, 219; Ga. L. 1919, p. 383, § 3; Code 1933, § 40-1001; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-3; Ga. L. 1982, p. 843, § 1; Code 1981, § 50-5A-2, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director” throughout this Code section; and, in the first sentence of the introductory language, deleted the comma follow-

ing “\$200,000.00” near the beginning and substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” at the end.

50-5A-3. Property of state treasurer liable for faithful performance; lien in favor of state.

The surety may, by express stipulation in writing, limit its liability to a specific sum to be stated in the bond of the state treasurer, and all the property of the state treasurer to the full amount of the bond and the property of the securities to the amount for which they may be severally bound shall be liable for the faithful performance by the state treasurer of the duties of the office from the date of the execution of the bond. A lien is created in favor of the state upon the property of the state treasurer to the amount of the bond and upon the property of the securities upon the bond to the amount for which they may be severally liable, from the date of the execution of the bond. (Ga. L. 1876, p. 126, § 3; Code 1882, § 91a; Civil Code 1895, § 189; Civil Code 1910, § 218; Code 1933, § 40-1002; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-4; Code 1981, § 50-5A-3, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director” throughout this Code section.

50-5A-4. (Effective until January 1, 2013. See note.) Bond to be recorded and filed; certified copy admissible in evidence.

The bond of the state treasurer, when duly executed and approved, shall be recorded in the Secretary of State's office and filed in the office of the Governor. A copy of the bond, when certified by one of the Governor's secretaries under the seal of the office of the Governor, or a certified copy taken from the records of the Secretary of State's office shall be received in evidence in any court in lieu of the original. (Ga. L. 1876, p. 126, § 5; Code 1882, § 91c; Civil Code 1895, § 191; Civil Code 1910, § 220; Code 1933, § 40-1003; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-5; Ga. L. 1982, p. 3, § 50; Code 1981, § 50-5A-4, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" near the beginning of the first sentence.

Editor's notes. — Code Section

50-5A-4 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

50-5A-4. (Effective January 1, 2013. See note.) Bond to be recorded and filed.

The bond of the state treasurer, when duly executed and approved, shall be recorded in the Secretary of State's office and filed in the office of the Governor. (Ga. L. 1876, p. 126, § 5; Code 1882, § 91c; Civil Code 1895, § 191; Civil Code 1910, § 220; Code 1933, § 40-1003; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-5; Ga. L. 1982, p. 3, § 50; Code 1981, § 50-5A-4, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296; Ga. L. 2011, p. 99, § 94/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former second sentence of this Code section, which read: "A copy of the bond, when certified by one of the Governor's secretaries under the seal of the office of the Governor, or a certified copy taken from the records of the Secretary of State's office shall be received in evidence in any court in lieu of the original." See editor's note for applicability.

Editor's notes. — Code Section 50-5A-4 is set out twice in this Code. The first version is effective until January 1,

2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

50-5A-5. Renewal of bond when insufficient; vacancy in office upon refusal to renew bond; appointment to fill vacancy.

The Governor, at all times when, in the Governor's opinion, the security or securities of the state treasurer have or are likely to become invalid or insufficient, shall demand and require the state treasurer forthwith to renew the bond to the state, in the amount and according to the form prescribed in Code Sections 50-5A-2 through 50-5A-4, and in case of neglect or refusal by any state treasurer to give bond, with security or securities, within ten days after the same is demanded and required by the Governor, such neglect or refusal shall be a disqualification under the law and shall create a vacancy in the office of the state treasurer. The State Depository Board shall forthwith appoint a fit and proper person to fill the vacancy occasioned thereby; and the appointee shall give bond and security in the same manner and upon the same terms as prescribed for the state treasurer. (Ga. L. 1876, p. 126, § 6; Code 1882, § 91d; Civil Code 1895, § 192; Civil Code 1910, § 221; Code 1933, § 40-1004; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-6; Ga. L. 1982, p. 3, § 50; Code 1981, § 50-5A-5, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" throughout this Code section.

50-5A-6. Execution instanter against state treasurer when liable to state.

If the state treasurer fails to perform the duties of the office, misapplies or misuses the funds of the state, or fails to account for and pay over any moneys that he or she may have received by virtue of the office, whereby the state treasurer becomes liable to the state, it shall not be necessary to bring an action on the official bond; but the Governor may issue an execution instanter against the state treasurer and the securities for the amount due the state by the state treasurer, with penalties and costs. The execution shall be directed to all and singular sheriffs of this state and shall be executed by them. The state treasurer and securities shall have only those defenses allowed tax collectors against executions issued against them by the state revenue commissioner. (Ga. L. 1876, p. 126, § 14; Code 1882, § 97b; Civil Code 1895, § 195; Civil Code 1910, § 224; Code 1933, § 40-1005; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-7; Code 1981, § 50-5A-6, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 1994, p. 97, § 50; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" throughout this Code section.

50-5A-7. Duties of Office of the State Treasurer generally; investments through treasurer.

(a) It shall be the power and duty of the Office of the State Treasurer:

(1) To receive and keep safely all moneys which shall from time to time be paid to the treasury of this state, and to pay all warrants legally drawn on the treasury by the Governor and countersigned by the Comptroller General or, in the Comptroller General's absence, by the deputy comptroller general, and to pay all drafts of the President of the Senate and the Speaker of the House of Representatives for sums lawfully due the members and officers of their respective bodies;

(2) To keep good and sufficient accounting records of every sum of money received into, or disbursed from, the state treasury, utilizing an accounting system in conformity with generally accepted accounting principles and approved by the state accounting officer;

(3) To keep a true and faithful record of all warrants drawn by the Governor on the treasury and all drafts drawn on the treasury by the President of the Senate and the Speaker of the House of Representatives;

(4) To keep a true and faithful record of the accounts with all designated state depositories in which the state's money is deposited, showing the principal amount and the interest earned in each depository;

(5) To keep safely certificates of stock, securities, state bonds, and other evidences of debt and to manage and control the same for the purposes to which they are pledged;

(6) To invest all state and custodial funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(7) To invest all health insurance funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(8) To invest all self-insurance, liability, indemnification, tort claims, workers' compensation, or related funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(9) To invest all other funds in its possession, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title; and

(10) To lend securities in its possession, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title.

(b) Pursuant to an investment policy adopted by the State Depository Board, the Office of the State Treasurer shall invest funds through the state treasurer. The state treasurer shall invest all funds with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering first the probable safety of their capital and then the probable income to be derived. (Laws 1799, Cobb's 1851 Digest, p. 1022; Laws 1839, Cobb's 1851 Digest, p. 1031; Laws 1843, Cobb's 1851 Digest, p. 1033; Laws 1845, Cobb's 1851 Digest, p. 1035; Ga. L. 1853-54, p. 9, § 10; Ga. L. 1859, p. 67, §§ 2, 3; Code 1863, §§ 89, 105; Code 1868, §§ 86, 103; Ga. L. 1869, p. 12, § 1; Code 1873, §§ 92, 111; Ga. L. 1876, p. 126, §§ 12, 13; Ga. L. 1878-79, p. 88, §§ 2, 4, 5; Code 1882, §§ 97, 111; Civil Code 1895, §§ 199, 218; Civil Code 1910, §§ 228, 252; Code 1933, § 40-1101; Ga. L. 1956, p. 802, § 1; Ga. L. 1972, p. 1015, §§ 408B, 2104; Code 1981, § 50-5-8; Ga. L. 1982, p. 843, § 2; Ga. L. 1992, p. 6, § 50; Code 1981, § 50-5A-7, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2000, p. 1474, § 1; Ga. L. 2004, p. 319, § 1; Ga. L. 2005, p. 694, § 3/HB 293; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" at the end of the introductory

paragraph of subsection (a) and at the end of the first sentence in subsection (b); and substituted "state treasurer" for "director" twice in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Repurchase agreements. — Office of the State Treasurer is empowered to enter into repurchase agreements and reverse repurchase agreements in connection

with fulfilling its role related to managing the investment and liquidity needs of the state. 2012 Op. Att'y Gen. No. 12-1.

50-5A-8. State government expenses to be paid by Governor's warrant drawn on appropriations.

Editor's notes. — Ga. L. 2010, p. 863, § 1, effective July 1, 2010, reenacted this

Code section without change. Refer to bound volume for text of this Code section.

50-5A-9. Assignment to Department of Administrative Services for administrative purposes.

The Office of the State Treasurer shall be assigned for administrative purposes only to the Department of Administrative Services, as provided in Code Section 50-4-3. (Code 1981, § 50-5A-9, enacted by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fis-

cal Services” near the beginning of this Code section.

50-5A-10. Transfer of powers and duties from former Office of Treasury and Fiscal Services; Georgia State Financing and Investment Commission; state treasurer.

The Office of the State Treasurer and the state treasurer shall be in all respects the successor agency to, and shall assume all the powers and duties of, the former Office of Treasury and Fiscal Services and its director. Without limiting the generality of the foregoing, the state treasurer shall serve as a member of the Georgia State Financing and Investment Commission; and for that purpose the state treasurer shall also be designated as the director of the Fiscal Division of the Department of Administrative Services. (Code 1981, § 50-5A-10, enacted by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, in the first sentence, substituted “Office of the State Treasurer and the state treasurer” for “Office of Treasury and Fiscal Services and its director” near the beginning and substituted “Office of

Treasury and Fiscal Services” for “Fiscal Division of the Department of Administrative Services” near the end; and substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in two places in the second sentence.

50-5A-11. Records not constituting public records.

(a) The following records, or portions thereof, shall not constitute public records and shall not be open to inspection by the general public:

(1) Participant account balances in the local government investment pool;

(2) All wiring or Automated Clearing House transfer of funds instructions;

(3) Account analysis statements received or prepared by the staff of the Office of the State Treasurer;

(4) All bank account numbers in the possession of the Office of the State Treasurer and any record or document containing such numbers;

(5) All proprietary computer software in the possession or under the control of the Office of the State Treasurer; and

(6) All security codes and procedures related to physical, electronic, or other access to the Office of the State Treasurer, its systems, and its software.

(b) For a period from the opening of bank accounts until such time as those bank accounts are closed, the local government investment pool

resolutions which pertain to the opening and maintenance of bank accounts shall not constitute public records and shall not be open to inspection by the general public.

(c) For a period from the date of creation of the record until the end of the calendar quarter in which the record is created, the following records, or portions thereof, shall not constitute public records and shall not be open to inspection by the general public:

(1) Investment trade tickets; and

(2) Bank statements of the Office of the State Treasurer.

(d) For a period from the date of creation of the record until 30 days after adoption, bank fee payment schedules shall not constitute public records and shall not be open to inspection by the general public.

(e) The restrictions of subsections (a), (b), (c), and (d) of this Code section shall not apply to access:

(1) Required by law, including disclosures required by subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings where the State of Georgia or the Office of the State Treasurer is a party;

(2) In prosecutions or other court actions to which the State of Georgia or the Office of the State Treasurer is a party;

(3) Given to federal or state regulatory or law enforcement agencies;

(4) Given to any person or entity in connection with its account in the local government investment pool managed by the Office of the State Treasurer pursuant to Chapter 83 of Title 36, the "Local Government Investment Pool Act"; or

(5) Given to the Governor, the Attorney General and the Department of Law, the Office of Planning and Budget, officers of the General Assembly, the legislative budget offices, the state accounting officer and the State Accounting Office, the state auditor and the Department of Audits and Accounts, or the State Depository Board for use and public disclosure in the ordinary performance of those officers' and offices' duties. (Code 1981, § 50-5A-11, enacted by Ga. L. 1997, p. 569, § 1; Ga. L. 2005, p. 694, § 4/HB 293; Ga. L. 2010, p. 863, § 1/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" throughout this Code section.

CHAPTER 5B

STATE ACCOUNTING OFFICE

Article 1

General Provisions

- Sec.
50-5B-2. Administrative units; directors; employees.
50-5B-3. Duties of the state accounting officer; recommendations for improving cash management practices; implementing policies.

Article 2

Office of Comptroller General

- Sec.
50-5B-20. Office of the Comptroller General; duties.
50-5B-21. Deputy comptroller general.
50-5B-22. Bound book detailing appropriations.
50-5B-23. Annual reporting.
50-5B-24. Seal.

ARTICLE 1

GENERAL PROVISIONS

Editor’s notes. — The existing provisions of Chapter 5B were designated as Article 1 by Ga. L. 2012, p. 1089, § 1/SB 343, effective July 1, 2012.

50-5B-2. Administrative units; directors; employees.

(a) The state accounting officer shall establish such units within the State Accounting Office as he or she deems proper for its administration, including The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys’ Council of the State of Georgia as separate units with distinct accounting functions, and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The state accounting officer shall have the authority, within budgetary limitations, to employ as many persons as he or she deems necessary for the administration of the office and for the discharge of the duties of the office. The state accounting officer shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees of the office within the limitations of the office’s appropriation, the requirements of the state system of personnel administration provided for in Chapter 20 of Title 45, and restrictions set forth by law. (Code 1981, § 50-5B-2, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2008, p. 577, § 21/SB 396; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-100/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “state system of personnel administration provided for in Chapter 20 of Title 45” for “State Personnel Administration” in the last sentence of subsection (b).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

50-5B-3. Duties of the state accounting officer; recommendations for improving cash management practices; implementing policies.

(a) The state accounting officer shall:

(1) Prescribe state-wide accounting policies, procedures, and practices;

(2) Prescribe, develop, operate, and maintain uniform state accounting systems for all state government organizations which facilitate financial accounting and reporting in accordance with generally accepted accounting principles and also meet state and federal accounting and financial reporting requirements;

(3) Prescribe the manner in which disbursements shall be made by state government organizations;

(4) Prescribe and supervise the installation of any changes in the state accounting information systems necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable, timely, and meaningful statements and reports;

(5) Manage the state's accounting, payroll, and human capital systems;

(6) Using generally accepted accounting principles, prepare the state's financial statements and other reports in accordance with legal requirements;

(7) Provide annual financial statements and other reports to the state auditor and other auditors, as appropriate, for review and certification when required by statute or federal regulation;

(8) Develop interim reports on the financial condition and budgetary compliance of the state and various state organizations;

(9) Determine the proper classification for accounting and reporting purposes of all assets, liabilities, revenues, expenditures, fund balances, funds, and accounts in compliance with legal requirements and generally accepted accounting principles and prescribe a uniform

classification of accounts and other accounting identifiers which shall be used by all state organizations;

(10) Develop processes and systems to improve accountability and enhanced collection of accounts receivable due to the state. In developing these processes, the state accounting officer may prescribe procedures to allow for the recognition of uncollectible accounts for financial reporting purposes. He or she may also develop guidelines to allow uncollectible debts to be removed from active collection processes. This recognition shall not remove or diminish the state's claim on accounts or debt owed to the state; and

(11) Develop processes and systems to improve accountability and enhance efficiency for disbursement of funds and management of accounts payable.

(b) The state accounting officer may recommend processes and systems to improve the cash management practices of the state to the State Depository Board. The state accounting officer in cooperation with the Office of the State Treasurer may prescribe policies and procedures to implement the policies of the board. (Code 1981, § 50-5B-3, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the second sentence of subsection (b).

ARTICLE 2

OFFICE OF COMPTROLLER GENERAL

Effective date. — This article became effective July 1, 2012.

50-5B-20. Office of the Comptroller General; duties.

(a) There shall be in the office of the State Accounting Office the office of the Comptroller General of the State of Georgia. The state accounting officer shall be the Comptroller General.

(b) It shall be the duty of the Comptroller General:

(1) To keep an account showing the several appropriations authorized by law, the time when the same are drawn from the treasury, in whose favor they are drawn, and to what fund they are charged;

(2) To examine, check, and countersign all warrants upon the treasury drawn by the Governor, the President of the Senate, and the Speaker of the House of Representatives and to charge the amount thereof to the funds on which they may be respectively drawn prior to

their being presented to the Office of the State Treasurer for payment;

(3) To audit all accounts against the state and to allow or reject the same before they are submitted to the Governor;

(4) To see that no draft or warrant shall be countersigned by him or her to be paid out of any appropriated fund after the fund has been exhausted; and, in such case, or in any case of illegal payments from the treasury upon warrants countersigned by the Comptroller General, the Comptroller General and the state treasurer with all their securities shall be jointly and severally liable upon their several bonds for the repayment of such amounts with all expenses of prosecution to the state;

(5) To receive and keep safely and collect all evidences of debt due to the state from any source other than taxes and to pay over the same to the state treasurer as soon as collected;

(6) To keep a book in which to enter all bonds taken and to file the originals in his or her office;

(7) To have made suitable indexes to the record books in his or her office; and

(8) To certify under his or her official seal at all times when necessary for public use and, on application and payment of his or her legal fees therefor, for private use, copies of any papers kept in his or her office. (Code 1981, § 50-5B-20, enacted by Ga. L. 2012, p. 1089, § 1/SB 343.)

50-5B-21. Deputy comptroller general.

The Comptroller General is authorized and directed to designate one of his or her employees as deputy comptroller general. In the event the Comptroller General is sick or for any other reason is absent from his or her office for three or more days, the deputy comptroller general shall examine, check, and countersign any warrants during the absence of the Comptroller General. (Code 1981, § 50-5B-21, enacted by Ga. L. 2012, p. 1089, § 1/SB 343.)

50-5B-22. Bound book detailing appropriations.

The Comptroller General shall keep in his or her office a bound book in which shall be entered in alphabetical order the full amount of all annual appropriations, setting forth the amounts under their several heads; all warrants that he or she may check and pass, together with the fund on which they are drawn and the time, amount, and in whose favor drawn; and all entries necessary for a true exhibit of the finances

of the state. (Code 1981, § 50-5B-22, enacted by Ga. L. 2012, p. 1089, § 1/SB 343.)

50-5B-23. Annual reporting.

The Comptroller General shall make an annual report to the Governor, which report shall show, from his or her books, a current account of all receipts and payments between the Office of the State Treasurer and the state, including the amount paid on the drafts of the President of the Senate and the Speaker of the House of Representatives as reported to him or her by the Office of the State Treasurer. (Code 1981, § 50-5B-23, enacted by Ga. L. 2012, p. 1089, § 1/SB 343.)

50-5B-24. Seal.

The Comptroller General shall have an official seal of such design as he or she shall select with the approval of the Governor. (Code 1981, § 50-5B-24, enacted by Ga. L. 2012, p. 1089, § 1/SB 343.)

CHAPTER 6

DEPARTMENT OF AUDITS AND ACCOUNTS

Article 2
State Auditor

Sec.
50-6-32. Short title; definitions; cre-

ation, operation, and maintenance of searchable website; public access to state expenditure information.

ARTICLE 2
STATE AUDITOR

50-6-32. Short title; definitions; creation, operation, and maintenance of searchable website; public access to state expenditure information.

- (a) This Code section shall be known and may be cited as the “Transparency in Government Act.”
- (b) As used in this Code section, the term:
 - (1) “Agency” means:
 - (A) Each department, commission, authority, and agency of state government;
 - (B) The Board of Regents of the University System of Georgia;

(C) Any regional educational service agency;

(D) The General Assembly, including all legislative offices and agencies; and

(E) Local boards of education.

(2) "Department" means the Department of Audits and Accounts.

(3) "Searchable website" means a single website that allows the public to review and analyze information identified in subsection (c) of this Code section.

(c)(1) The department shall develop and operate a searchable website accessible by the public, at no cost, that provides the following information pertaining to state fiscal year 2008 and each state fiscal year thereafter:

(A) The State of Georgia Comprehensive Annual Financial Report that includes an indexed statement of operations and a statement of financial condition of the state in accordance with governmental generally acceptable accounting principles;

(B) The annual Budgetary Compliance Report for the state that provides, by agency, an indexed report comparing budgeted and actual revenues and expenditures by budgetary units for each organization included in the General Appropriations Act, as amended. Such report shall include, at a minimum, a statement of the taxes and other revenues remitted to the state treasury and operating revenues retained by the agency during the immediately preceding fiscal year as well as a statement of total expenditures made by the agency during the immediately preceding fiscal year;

(C) The annual State of Georgia Single Audit Report that provides, by federal grant, an indexed listing of all expenditures of federal funds and also discloses by state organization any audit findings and corrective actions to be taken;

(D) Salaries and expenses of full-time and part-time employees and board members;

(E) A list of consultant expenses and other professional services expenses;

(F) State Budget in Brief, indexed by reporting agency;

(G) All performance audits conducted by the department for the preceding five years; and

(H) An indexed listing of all agencies and end users receiving any federal pass-through moneys and an itemized enumeration of the expenditure of such moneys.

(2) As soon as is practical after the close of each fiscal year, the department shall update the searchable website for such fiscal year to include the information set forth in paragraph (1) of this subsection.

(d)(1) The department shall develop and add to the searchable website a report of certain grant and contract payments made or due to vendors by agencies reporting through the state's general financial accounting and information system and all payments made through economic and incentive programs operated by the Department of Economic Development, the Department of Labor, the Department of Community Affairs, the Department of Agriculture, and the Georgia Lottery Corporation pertaining to state fiscal year 2009 and each state fiscal year thereafter. Such report shall include, at a minimum:

(A) A list of all obligations entered into by the agency during the immediately preceding fiscal year which call for the agency to expend at any time in the aggregate more than \$50,000.00; and

(B) A list of the names of each person, firm, or corporation that has received from the agency during the immediately preceding fiscal year payments in excess of \$20,000.00 in the aggregate, including the amount paid to such person, firm, or corporation during such period.

(2) As soon as is practical after the close of each fiscal year, the department shall update the searchable website for such fiscal year to include the information set forth in this subsection.

(3) Offices of the judicial branch shall provide the information required by agencies under this subsection.

(e) All agencies shall provide to the Department of Audits and Accounts such information as is necessary to accomplish the purposes of this Code section.

(f) Nothing in this Code section shall require the disclosure of information which is considered confidential by state or federal law.

(g) Each local board of education subject to Code Section 48-8-141 shall provide the information required under that Code section to the department for posting on the searchable website. (Code 1981, § 50-6-32, enacted by Ga. L. 2008, p. 522, § 7/SB 300; Ga. L. 2010, p. 906, § 2/HB 1013; Ga. L. 2010, p. 1253, § 1/SB 389.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, rewrote subsection (b); and added subsection (g). The second 2010 amendment, effective July 1, 2010, rewrote subsections (b) and (c); in subsection (d), designated

the existing provisions as paragraphs (d)(1) and (d)(2), in the first sentence of paragraph (d)(1), substituted "The department" for "No later than January 1, 2010, the department" at the beginning and added "and each state fiscal year thereaf-

ter", redesignated former paragraphs (d)(1) and (d)(2) as present subparagraphs (d)(1)(A) and (d)(1)(B), respectively, deleted "single" preceding "searchable" in the middle of paragraph (d)(2), and added paragraph (d)(3); and deleted "of state government" following "All agencies" in subsection (e). See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — The amendment to paragraph (b)(1) of this Code section by Ga. L. 2010, p. 906, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1253, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

CHAPTER 7

DEPARTMENT OF ECONOMIC DEVELOPMENT

Article 1

General Provisions

- Sec.
50-7-8. Additional duties and powers of board.
50-7-16. Definitions; acquisition of property by Department of Economic Development.
50-7-18. Disposition of assets of the Georgia Golf Hall of Fame.

Article 3

Geo. L. Smith II Georgia World Congress Center

- 50-7-41. Lease of property to authority.

Article 4

Georgia International and Maritime Trade Center

- Sec.
50-7-51. Authority and duties of department and local government; purposes of local government; lease of property.
50-7-70. Legislative findings; definitions; criteria and application process; fee; directional road signs; rules and regulations.

ARTICLE 1

GENERAL PROVISIONS

50-7-8. Additional duties and powers of board.

The board shall also have the following duties and powers:

(1) To conduct and make such surveys and investigations, to gather and compile such information, and to make and prepare such reports, plans, and maps as may be necessary or proper effectually to discharge the duties and exercise the powers of the board enumerated in this article;

(2) To engage in and promote and encourage research designed to further new and more extensive uses of the agricultural and natural resources or other products or resources of the state and designed to develop new products and industrial processes;

(3) To study trends and developments in business, industry, and agriculture in the state and analyze such trends and developments and the reasons therefor; to study costs and other factors underlying the successful operation of businesses and industries in the state; and to make recommendations regarding circumstances promoting or hampering industrial or agricultural development;

(4) To collect, compile, and publish in print or electronically periodically a census of business and industry in the state with the cooperation of other agencies, and to analyze and publish in print or electronically information relating to current conditions of business, industry, and agriculture in the state;

(5) To compile, publish in print or electronically, and make available for distribution to interested persons the results of any and all studies, surveys, and investigations; any and all information gathered; and any and all reports made and plans and maps prepared;

(6) To coordinate any of its activities, efforts, or functions with those of any other agency or agencies of the federal government, this state, other states, and local governments having duties, powers, or functions similar to those of the board, and to cooperate, counsel, and advise with such agencies;

(7) To cooperate, counsel, and advise with and to encourage and promote coordination in the efforts of other organizations or groups within the state, public or private, engaged in publicizing the advantages, attractions, or resources of the state;

(8) To cooperate, counsel, and advise with municipal, county, regional, or other local planning agencies in the state for the purpose of promoting coordination between the state and localities as to plans, policies, development of commerce, industry, or agriculture, publicity, and other related activities and functions;

(9) To solicit and receive gifts, donations, or contributions from any person, firm, or corporation in furtherance of the services, purposes, duties, responsibilities, or functions vested in the board;

(10) To authorize the Department of Economic Development in accordance with all applicable state laws to contract and make cooperative agreements, contracts, and rental agreements with the United States government; any county, municipality, or local government or any combination thereof; any public or private corporation or firm; any persons whatsoever; or any public authority, agency, commission, or institution, including agencies of state government for any of the services, purposes, duties, responsibilities, or functions vested in the board;

(11) To authorize the Department of Economic Development to participate with public and private groups, organizations, and busi-

nesses in joint marketing projects that promote the economic and tourist development of the State of Georgia and make efficient use of state appropriated marketing funds. In connection with such projects, the department may receive supplies, materials, equipment, services, and other personal property and intangible benefits. It may also issue licenses to others for the use of property in its custody or control, including intellectual property and other personal property, but may not become a joint owner. In acquisitions under this paragraph, the department shall be exempt from the provisions of Chapters 5 and 25 of this title. By way of illustration and not limitation, the department may allow the use of its logo in advertising and on uniforms provided by cooperating entities for wear by department employees. The board shall adopt and amend its policies, regulations, rules, and procedures as necessary to implement this provision and shall not be subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act," in doing so. In this paragraph, "marketing" means promotion, advertising, signage, public relations, press relations, branding, and use of a "look"; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood. The department will utilize competitive procedures and the Georgia Registry whenever in its reasonable discretion it is in the best interest of the state to do so. The Georgia Technology Authority will retain its authority over technology but will defer to the department in matters of marketing of economic development and implementation in such overlapping areas as creation of kiosks and web page design and operation. The Department of Administrative Services will retain its authority over purchasing in areas not peculiarly germane to marketing implementation, such as printing and shipping, but will defer to the department in matters of marketing of economic development and implementation in overlapping areas;

(12) To assist the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in the administration and performance of the Georgia Music Hall of Fame Authority's duties, powers, responsibilities, and functions as provided in Part 10 of Article 7 of Chapter 3 of Title 12;

(13) To enter into contracts with the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in assisting the Georgia Music Hall of Fame Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the Georgia Music Hall of Fame Authority and not on behalf of the department; and provided, further, that such assistance shall not include the authorization of the issuance of any bonds

or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Music Hall of Fame Authority, including the provision for joint or complementary services, within the scope of their respective powers; and

(14) To induce, by payment of state funds or other consideration, any agency or authority assigned to the department for administrative purposes to perform the agency or authority's statutory functions. (Ga. L. 1949, p. 249, § 15; Ga. L. 1959, p. 262, §§ 16-18; Ga. L. 1962, p. 694, § 8; Ga. L. 1985, p. 428, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 684, § 1; Ga. L. 2004, p. 690, § 32; Ga. L. 2005, p. 306, §§ 2, 3/SB 125; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraphs (4) and (5).

50-7-16. Definitions; acquisition of property by Department of Economic Development.

(a) As used in this Code section, the term:

(1) "Acquire" means the obtaining of a fee simple interest in real property by any method including, but not limited to, gift, purchase, condemnation, devise, court order, and exchange.

(2) "Lease" means a written instrument under the terms and conditions of which one party out of its own estate grants and conveys to another party or parties an estate for years retaining a reversion in itself after such grant and conveyance.

(3) "Person" means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; authority; fiduciary; governmental body, instrumentality, or other organization of the state; county of the state; municipal corporation of the state; political subdivision of the state; governmental subdivision of the state; and any other legal entity doing business in the state.

(4) "Project" means a facility to be used in conjunction with trade, commerce, industry, manufacturing, or tourism in the state.

(5) "Rental agreement" means a written instrument the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only usufruct.

(b) The Department of Economic Development is authorized to acquire real property and to construct, operate, and maintain such projects as are beneficial to the development of industry, trade, and

tourism and to create economic and employment opportunities in the state. The department is authorized, with the approval of the State Properties Commission, to enter into agreements to lease, rent, or convey the real property of any such project with any person in order to accomplish such goals and upon such other terms and conditions as the department may determine to be necessary or convenient for such substantial public benefit and such consideration as may be determined by the department to be fair and equitable to the state under all the circumstances in accordance with the provisions of Article III, Section VI, Paragraph VI of the Constitution of Georgia, relating to gratuities. Subject to such principles, any such lease or rental agreement may be for and in consideration of a minimum of \$1.00 annually for each calendar year or portion thereof paid in kind to the Office of the State Treasurer and may arrange for the conveyance of such land for a fixed price, provided that such property be held, constructed, operated, maintained, expanded, or improved by the grantee and its successors and assigns consonant with the purposes of the project and other requirements of the department. (Code 1981, § 50-7-16, enacted by Ga. L. 2004, p. 684, § 2; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fis-

cal Services" in the last sentence of subsection (b).

50-7-18. Disposition of assets of the Georgia Golf Hall of Fame.

The department shall receive all assets, excluding all real property and statues, of the Georgia Golf Hall of Fame Authority and the Georgia Golf Hall of Fame Board. The department shall be responsible for any contracts, leases, agreements, or other obligations of such board and authority. The department is substituted as a party to any contract, agreement, lease, or other obligation and is responsible for performance as if it had been the original party and is entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations. The statues owned or controlled by the Georgia Golf Hall of Fame shall be transferred by the department no later than January 1, 2011, to Augusta, Georgia, for public use by the Augusta-Richmond County Commission. (Code 1981, § 50-7-18, enacted by Ga. L. 2010, p. 753, § 2/SB 449.)

Effective date. — This Code section became effective June 2, 2010.

Editor's notes. — Ga. L. 2010, p. 753, § 4, not codified by the General Assembly, provides: "The state, acting by and through its State Properties Commission, shall be authorized to sell by competitive bid all real property owned or controlled

by the Georgia Golf Hall of Fame or its authority or board for a consideration of not less than the fair market value as determined by the State Properties Commission and not less than the amount of the outstanding bond indebtedness associated with the Georgia Golf Hall of Fame. Such sale shall be as provided in Code

Section 50-16-39. Such authorization date of this Act.” This Act became effective shall expire three years after the effective June 2, 2010.

ARTICLE 3

GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER

50-7-41. Lease of property to authority.

In addition to its authority and duties provided under Code Section 10-9-5, the department shall have the authority with the approval of the State Properties Commission to lease any improved or unimproved land or other property acquired by it under Code Section 50-7-40 to the Geo. L. Smith II Georgia World Congress Center Authority for a term not to exceed 50 years but upon such other terms and conditions as the department may determine necessary or convenient. Any such lease shall be for and in consideration of \$1.00 annually for each calendar year or portion thereof paid in kind to and receipted for by the Office of the State Treasurer and in further consideration of the reasonable compliance by the authority with the requirement that such property be held, constructed, operated, maintained, expanded, or improved for the purposes for which the department was authorized to acquire such property. It is determined that such consideration is good and valuable and sufficient consideration for such lease and in the interest of the public welfare of the State of Georgia and its citizens. (Code 1981, § 50-7-41, enacted by Ga. L. 1988, p. 556, § 5; Ga. L. 1989, p. 1641, § 14; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in the middle of the second sentence.

ARTICLE 4

GEORGIA INTERNATIONAL AND MARITIME TRADE CENTER

50-7-51. Authority and duties of department and local government; purposes of local government; lease of property.

(a)(1) The department is authorized to acquire, construct, operate, maintain, expand, and improve a project for the purpose of promoting trade, commerce, industry, and employment opportunities within this state for the public good and general welfare and, without limitation of the foregoing, with the approval of the State Properties Commission, to acquire land for such purposes.

(2) The department may pay the costs of such project from any lawful fund source available for the purpose, including without

limitation, where applicable, funds received by appropriation, proceeds of general obligation debt, funds of local government, grants of the United States or any agency or instrumentality thereof, gifts, and otherwise.

(3) The project shall be located in Chatham County, Georgia, and shall be known as the "Georgia International and Maritime Trade Center," except that any facility included within the project may be otherwise designated.

(b) A local government and the department are both authorized to contract with one another whereby local government may exercise on behalf of the department such future responsibility in connection with the construction, operation, management, and maintenance of the project as is now or may be vested in the department; and the department is authorized by such contract to delegate to the local government corresponding responsibilities and powers with respect to the project and to transfer to the local government any and all contracts, plans, documents, or other papers of said department relating to the project, as compensation to the local government under such contract. To the extent provided by such contract with the department, local government on behalf of the department shall acquire, plan, construct, erect, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage the project.

(c) Without limiting the generality of any provision of this article, the general purpose of the local government is declared to be that of acquiring, constructing, equipping, maintaining, and operating the project, in whole or in part, directly or under contract with the department and engaging in such other activities as it deems appropriate to promote trade shows, conventions, and political, musical, educational, entertainment, recreational, athletic, or other events and related tourism within the state so as to promote the use of the project and the use of the industrial, maritime, agricultural, educational, historical, cultural, recreational, commercial, and natural resources of the State of Georgia by those using the project or visiting the state.

(d) The department shall have the authority with the approval of the State Properties Commission to lease any improved or unimproved land or other property acquired by it under this Code section to local government for a term not to exceed 50 years but upon such other terms and conditions as the department may determine necessary or convenient. Any such lease may be for and in consideration of \$1.00 annually for each calendar year or portion thereof paid in kind to and receipted for by the Office of the State Treasurer and in further consideration that such property be held, constructed, operated, maintained, expanded, or improved for the purposes for which the department was authorized to acquire such property. It is determined that such consideration is good

and valuable and sufficient consideration for such lease and in the interest of the public welfare of the State of Georgia and its citizens. (Code 1981, § 50-7-51, enacted by Ga. L. 1994, p. 166, § 1; Ga. L. 1998, p. 128, § 50; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the second sentence of subsection (d).

50-7-70. Legislative findings; definitions; criteria and application process; fee; directional road signs; rules and regulations.

(a) The General Assembly finds that:

(1) Agricultural tourist attractions provide unique opportunities for tourists to enjoy Georgia's resources; and

(2) Agricultural tourist attractions provide an impact on Georgia's economy and a substantial benefit to Georgia.

(b) As used in this Code section, the term:

(1) "Agricultural tourist attraction" means any agricultural based business providing onsite attractions to tourists that meet the criteria set out by the Department of Agriculture.

(2) "Department" means the Department of Agriculture.

(3) "Directional signs" shall have the meaning provided in paragraph (4) of Code Section 32-6-71.

(c) The Department of Agriculture shall:

(1) Develop criteria and an application process to determine what constitutes an agricultural tourist attraction; and

(2) Maintain a registry of approved agricultural tourist attractions.

(d) Entities wishing to be recognized by the department as an agricultural tourist attraction shall submit an application to the department with a one-time application fee of not less than \$300.00.

(e) Upon approval by the department as an agricultural tourist attraction and at the request of the applicant, the department shall, in conjunction with the Department of Transportation, take the appropriate steps to place directional signs along roads in the direct proximity of the agricultural tourist attraction to direct passing traffic to the agricultural tourist attraction.

(f) The department and the Department of Transportation shall create rules and regulations for the purpose of implementing this Code

section. (Code 1981, § 50-7-70, enacted by Ga. L. 2008, p. 314, § 1/HB 1088; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2010, p. 9, § 1-92/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted "not less than \$300.00" for "up to \$250.00" at the end of subsection (d).

CHAPTER 8

DEPARTMENT OF COMMUNITY AFFAIRS

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Law reviews. — For article, “State Affairs,” see 28 Ga. St. U. L. Rev. 305 Government: Department of Community (2011).

ARTICLE 1

GENERAL PROVISIONS

50-8-6. Divisions, sections, and offices of department.

The department shall be divided into such divisions, sections, or offices as may be necessary from time to time. All divisions, sections, or offices in existence immediately prior to July 1, 1989, shall continue to exist in accordance with this article. Thereafter, divisions, sections, and offices shall be abolished, reorganized, or established from time to time by the commissioner and as otherwise specified by law. The commissioner shall appoint such directors, deputies, and assistants as may be necessary to manage such divisions, sections, and offices. Such positions shall be in the unclassified service as defined by Code Section 45-20-2. (Code 1981, § 50-8-6, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-101/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in the last sentence of this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

50-8-7. Planning and technical assistance activities; gathering and distribution of information and studies.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such planning and technical assistance activities as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such planning and technical assistance activities may include, but shall not be limited to, the following:

(1) The department may provide technical assistance to local governments. This assistance may be directed to any and all activities of local government including, but not limited to, preparation and

implementation of a comprehensive plan, community and economic development, and governmental administration, finance, management, and operations;

(2) The department may provide planning assistance to local governments. This assistance may include assistance with respect to preparation or implementation of a local government's comprehensive plan and participation in the process for coordinated and comprehensive planning. This assistance may also include long-range planning relevant to one or more local governments to identify the needs of such local governments or planning with respect to downtown development and the redevelopment and revitalization of downtown areas and central business districts;

(3) The department may assist local governments in planning for the consequences or other results of decisions or actions by any government which have an impact on local governments or on any of their citizens;

(4) The department may provide planning assistance to any local government or any state agency or state authority in connection with housing and dwelling places for citizens of the state. This assistance may include planning with respect to the availability of single-family, multifamily, and other types of housing units, the anticipated changes in such availability, the potential occupants for such housing, and the anticipated changes in such potential occupants. This assistance may also include planning with respect to homeless persons and the shelter needs of homeless persons; and

(5) The department's planning and technical assistance activities may include planning, technical assistance, analysis, recommendations for policies or action, and related activities and services with respect to any lawful purpose or activity of a local government.

(b) The department shall undertake and carry out, and shall coordinate with other state agencies and local governments in undertaking and carrying out, such gathering of information, such distribution of information, and such studies and recommendations as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such coordinating, gathering, and distribution of information and studies may include, but shall not be limited to, the following:

(1) The department shall coordinate and participate in compiling, and other state agencies and local governments shall participate in compiling, a Georgia data base and network to serve as a comprehensive source of information available, in an accessible form, to local governments and state agencies. The Georgia data base and network shall collect, analyze, and disseminate information with respect to

local governments, regional commissions, and state agencies. The Georgia data base and network shall include information obtained or available from other governments and information developed by the department. To maintain the Georgia data base and network, the department shall make, and shall coordinate with other state agencies and local governments in making, comprehensive studies, investigations, and surveys of the physical, social, economic, governmental, demographic, and other conditions of the state and of local governments and of such other aspects of the state as may be necessary to serve the purposes of the department. The department shall make available the Georgia data base and network, or provide access to the Georgia data base and network, to other state agencies, local governments, members of the General Assembly, and residents of the state;

(2) The department may assist the Governor, the General Assembly, any committees of the General Assembly, any state department, any state agency, any state authority, or any local government with studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information prepared, developed, or obtained by the department;

(2.1) The department may assist any local government or local authority owning or operating a facility for convention and trade show purposes or any other similar or related purposes in identifying and promoting regional economic assistance projects within their respective jurisdictions, and such facility, if the subject of a reciprocal use agreement, shall be an adjacent facility satisfying the criteria of paragraph (1) of subsection (c) of Code Section 50-8-191;

(3) The department may undertake studies, investigations, and surveys to identify potential physical, social, economic, governmental, demographic, or other problems and opportunities in the urban, suburban, and rural areas of the state and to assist local governments in preparing to avoid the consequences of such problems or to take advantage of such opportunities; and

(4) The department may write, draft, prepare, or publish in print or electronically any studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information with respect to local or regional government affairs. The department may distribute or otherwise disseminate any such studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information to any government, any state authority or state agency, or any private entity.

(c) The duties, responsibilities, and functions of the department and the power and authority of the department described in this Code

section are cumulative with, and in addition to, all other duties, responsibilities, and functions and power and authority of the department and are not intended to, and shall not be construed to, conflict with any other duties, responsibilities, or functions or any other power or authority of the department, including, but not limited to, the duties, responsibilities, and functions and the power and authority described in Code Section 50-8-7.1. (Code 1981, § 50-8-7, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 3/HB 1216; Ga. L. 2008, p. 363, § 2/HB 1280; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence of paragraph (b)(4).

50-8-8. Grants, loans, and other disbursements of funds; state community development program.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall make grants or loans to eligible recipients or qualified local governments, which grants or loans are specified by amount, recipient, and purpose in an appropriation to the department; provided, however, that the department shall not make such a grant to any county or independent board of education for the construction or operation of athletic facilities during the fiscal year following the receipt by the department of certification by the State Board of Education that the county or independent board of education is not in compliance with the requirements of Code Section 20-2-315. The department shall also grant to any school district the proceeds of any general obligation debt for educational facilities for which the department is named user agency and the school district is named recipient in an appropriation authorizing the debt. The department may make grants or loans to eligible recipients or qualified local governments from appropriations made to the department generally for grant or loan purposes, without appropriations language specifying amounts, recipients, and purposes. The department:

(1) Shall disburse such grants or loans on the basis of criteria which include consideration of matters such as legislative intent, local, regional, or state-wide impact or benefit; public exigencies or emergencies; enhancement of community and economic development opportunities; improvement or expansion of government operations or services; community health, safety, and economic well-being; coordinated and comprehensive planning in accordance with minimum standards and procedures; and any other similar criteria that may from time to time be established by the department; and

(2) May condition the award of any such grants or loans to a county or municipality upon the county or municipality, as the case may be, being a qualified local government.

(b) The department shall direct the distribution of any appropriations or other funds available for coordinated and comprehensive planning in accordance with the Act of the General Assembly providing for such appropriations. No grant or loan by the department to any eligible recipient or qualified local government shall adversely affect any grant, loan, or service to the eligible recipient or qualified local government by any other unit or instrumentality of state government. Without limiting the foregoing, the Department of Education, the Department of Transportation, the Georgia Environmental Finance Authority, and the state treasurer shall not diminish or fail to award any funds, loans, or service to any recipient under any state or federal program in whole or in part on account of a grant or loan by the department. Grants or loans by the department are and shall be deemed to be of a special nature and in addition to all such other grants, loans, or awards. The following provisions shall apply to making such funds available to eligible recipients or qualified local governments:

(1) The department may make available funds by grant or loan to an eligible recipient or qualified local government, by direct payments on behalf of an eligible recipient or qualified local government, or by any other lawful means. In the event the department determines that, in its judgment, a regional commission has failed to comply with its duties as provided by law or with the terms of a contract between such regional commission and a local government, the department shall be authorized to make payments, which it otherwise would have made to the regional commission, directly to the local government or as the department otherwise determines in order to carry out the duties of the regional commission under the law or such contract;

(2) The department may accept, use, and disburse gifts and grants made to it on terms consistent with its legal powers, from any public or private source;

(3) The department shall specify the terms under which it makes any funds available to an eligible recipient or qualified local government. The terms shall be those established or otherwise required by the government or other source which makes the funds available to the department. If such government or other source does not establish or otherwise require any such terms, the department may establish the terms;

(4) The department shall set forth in writing the terms under which the department makes funds available to a qualified local government or eligible recipient. The terms may be set forth in a contract. The department may execute any such contract on behalf of the state, and any eligible recipient which is a qualified local government, school district, state agency, or state authority is autho-

rized to execute any such contract. Any such writing or contract may incorporate other terms or laws by reference to such terms or laws;

(5) The department shall manage and administer all funds made available pursuant to this Code section; and

(6) The department may make funds available for any purpose for which the eligible recipient or qualified local government may lawfully use such funds. Unless precluded by general law, these purposes may include, but shall not be limited to, assisting in or furthering any of the purposes, duties, responsibilities, functions, power, or authority of local governments or the department. These purposes may also include, but shall not be limited to, establishing, developing, constructing, improving, maintaining, restoring, or protecting local government projects or purposes of any nature, such as:

- (A) Construction projects;
- (B) Capital outlay projects;
- (C) Infrastructure projects;
- (D) Planning services;
- (E) Technical assistance;
- (F) Coordinated and comprehensive planning;
- (G) Marketing and promotional projects to encourage tourism and to develop, promote, and retain trade, commerce, industry, and employment opportunities, agriculture, and agribusiness;
- (H) Purchase or lease of equipment;
- (I) Operating expenses;
- (J) Housing projects;

(K) Any project for the purposes of acquiring, constructing, equipping, maintaining, and operating regional commerce and trade center facilities suitable for housing conventions and trade shows as well as cultural, political, musical, educational, athletic, and other events, in order to provide for the establishment, development, and maintenance of commerce and trade;

(L) Any project or purpose described in or permitted under any appropriations to the department;

(M) Any project or purpose described in or permitted under any grant made to, or to be made by or through, the department;

(N) Any project or purpose provided for in the federal Housing and Community Development Act of 1974, as amended, or any successor to the Housing and Community Development Act of 1974;

(O) Any project or purpose provided for in the federal Public Works and Economic Development Act of 1965, as amended, or any successor to the Public Works and Economic Development Act of 1965;

(P) Any project or purpose authorized by federal or state law; or

(Q) Any other project or purpose consistent with the duties, responsibilities, functions, power, and authority of the department.

(c) The department may apply for, receive, administer, and use any grant, other financial assistance, or other funds made available to the department from any government or other source for furthering the purposes of the department. The department's actions in this respect may be taken for itself or on behalf of qualified local governments or other eligible recipients. The department's power and authority under this subsection includes, but shall not be limited to, the following:

(1) The department may apply on behalf of qualified local governments or other eligible recipients for receipt of state appropriated funds from the Governor's emergency fund as provided by Code Section 45-12-77. If such an application is approved, or if state appropriated funds from the Governor's emergency fund as provided by Code Section 45-12-77 are otherwise made available to the department, the department may be authorized by the Governor to disburse such emergency funds to the local government or other eligible recipient; and

(2) The department may accept on behalf of qualified local governments or other eligible recipients funds provided to the department by an executive order of the Governor and may disburse such funds to such local governments or other eligible recipients. The eligible recipient and the terms under which such funds are made available for use by the eligible recipient shall be specified in the executive order and shall be made a part of any writing or contract between the department and the eligible recipient.

(d) The department is authorized and shall have all powers necessary to participate in federal programs and to comply with laws relating thereto.

(e) The governing authority of any county, municipality, or combination thereof may expend public funds received from the department to perform any public service or public function as authorized under the terms specified by the department or, in the absence of any such terms, as otherwise authorized by the Constitution or by law or to perform any other service or function as authorized by the Constitution.

(f) The department shall make available to any state agency or authority assigned to the department for administrative purposes all

funds made available to the department for the use of any such state authority or agency. The department may make available funds to such state agencies or authorities for any lawful purposes of any such state agencies or authorities.

(g) The power and authority of the department under this Code section to make available to local governments or any other eligible recipient any funds shall be limited by the Constitution and laws of the state, and as specified in this Code section, but shall not otherwise be limited.

(h) Pursuant to Article VII, Section III, Paragraph III of the Constitution and as otherwise may be authorized, all grants and other disbursements of funds made by the department or from the emergency fund through the department prior to July 1, 1989, are approved, ratified, and confirmed.

(i) There is established within the department a state community development program. Funds may be appropriated to such a program by line item reference in any appropriations Act. Using such funds as may be appropriated the department may provide assistance to eligible local governments that are qualified to participate in the state administered federal community development block grant program, in the form of grants, loans, loan guarantees, or any combination thereof. Nothing contained in this subsection shall be construed to limit any other powers of the department. (Code 1981, § 50-8-8, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1129, § 3; Ga. L. 2000, p. 1423, § 1; Ga. L. 2008, p. 181, § 18/HB 1216; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the third sentence of subsection

(b). The second 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” in the third sentence of subsection (b).

50-8-13. Authorities and agencies assigned to department.

(a) Authorities or agencies may be assigned to the department for administrative purposes in accordance with Code Section 50-4-3. The following authorities are assigned to the department in accordance with such Code section:

- (1) The Georgia Environmental Finance Authority; and
- (2) The Georgia Housing and Finance Authority.

(b) The department may induce, by payment of state funds or other consideration, any agency or authority assigned to the department for

administrative purposes to perform any local government services and to perform its own statutory function. (Code 1981, § 50-8-13, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” near the end of paragraph (a)(1).

50-8-17. Employees serve in classified and unclassified service.

Employees of the department shall serve in the classified and unclassified service as defined by Code Section 45-20-2. (Code 1981, § 50-8-17, enacted by Ga. L. 1996, p. 872, § 8; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-102/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of this Code section for the former provisions, which read: “Employees of the department shall serve in the unclassified service of the State Personnel Administration as defined by Code Section 45-20-6, provided that employees who serve in the classified service of the State Personnel Administration as defined by Code Section 45-20-6 may elect to remain in the classified service and be governed by the provisions thereof; provided, however, that if such person accepts a promotion or transfer to another position, he or she shall become an employee in the unclassified service.”

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

ARTICLE 2

REGIONAL COMMISSIONS

PART 1

LEGISLATIVE FINDINGS

Editor’s notes. — The existing provisions of Article 2 were designated as Part 1 by Ga. L. 2010, p. 468, § 1, effective July 1, 2010.

PART 2

COMMISSION ON REGIONAL PLANNING

Effective date. — This part became effective July 1, 2010.

50-8-50. Creation; role; application.

There is created the Commission on Regional Planning. The Commission on Regional Planning shall coordinate state contract terms, identify appropriate state and federal funding for commissions in the pursuit of shared service delivery goals, coordinate planning of state and federal resource allocation and state service delivery, and identify issues and opportunities requiring state, regional, or local action. This Code section shall not apply to or affect aging programs and services that are under the authority of the Division of Aging Services of the Department of Human Services for planning and administration purposes pursuant to the federal Older Americans Act of 1965. (Code 1981, § 50-8-50, enacted by Ga. L. 2010, p. 468, § 1/HB 867.)

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

50-8-51. Establishment of board of directors; membership.

(a) The Commission on Regional Planning shall be governed by a board of directors that shall initially consist of the following members:

- (1) The Governor;
 - (2) The chairperson of each council governing each commission as defined in Code Section 50-8-31;
 - (3) The president or executive director of the Association County Commissioners of Georgia;
 - (4) The president or executive director of the Georgia Municipal Association;
 - (5) The commissioner of community affairs;
 - (6) The commissioner of economic development;
 - (7) The commissioner of human services;
 - (8) The commissioner of natural resources;
 - (9) The commissioner of transportation;
 - (10) The director of the Environmental Protection Division;
 - (11) The director of the Georgia Environmental Finance Authority;
 - (12) A designee of the Lieutenant Governor;
 - (13) A designee of the Speaker of the House of Representatives;
- and
- (14) A designee of the State School Superintendent.

(b) The Governor shall serve as chairperson of the Commission on Regional Planning. The Governor is authorized to appoint other members to the Commission on Regional Planning as appropriate. The commissioner of community affairs shall serve as executive director of the Commission on Regional Planning. The chairperson of the appropriate committees of the Senate and the House of Representatives, as determined by the Lieutenant Governor and the Speaker of the House of Representatives, respectively, may serve as ex-officio nonvoting members of the Commission on Regional Planning. (Code 1981, § 50-8-51, enacted by Ga. L. 2010, p. 468, § 1/HB 867.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “Georgia Environmental Finance Authority” was substituted for “Georgia Environmental Facilities Authority” in paragraph (a)(11).

50-8-52. Executive directors of commissions acting as advisers.

Each executive director of each commission established pursuant to Part 1 of this article shall act as an adviser to the Commission on Regional Planning. (Code 1981, § 50-8-52, enacted by Ga. L. 2010, p. 468, § 1/HB 867.)

ARTICLE 6

OFFICE OF RURAL DEVELOPMENT;
STATE ADVISORY COMMITTEE
ON RURAL DEVELOPMENT

PART 1

OFFICE OF RURAL DEVELOPMENT

50-8-141. Duties and responsibilities.

The Office of Rural Development is charged and empowered to carry out the following duties and responsibilities:

- (1) To serve as the clearing-house and point of contact in state government for information, data, resources, and assistance regarding rural development. The office shall either provide assistance or refer local governments, individuals, and others seeking help to the appropriate department or agency of the state or federal government or elsewhere where applicable;
- (2) To conduct ongoing research and analyses of issues and policies affecting rural Georgia and provide advice and recommendations to the Governor and General Assembly on such issues and policies and to publish in print or electronically periodically information and data

on the rural economy, including the preparation of the biennial rural economic development plan required in Part 2 of this article;

(3) To monitor and report on activities at the federal level affecting rural development to ensure a prompt and adequate state response to new or amended federal programs and initiatives;

(4) To serve as the Governor's principal adviser on rural development and to assist in coordinating the activities and services of state agencies in order to provide more effective services to rural Georgia;

(5) To supply coordination among state agencies, the University System of Georgia, and others on research and technical assistance related to rural development;

(6) To provide technical assistance to rural communities to facilitate the planning, design, and implementation of rural development initiatives; and

(7) To encourage the assistance of the private sector in effectuating rural development and revitalization. (Code 1981, § 50-8-141, enacted by Ga. L. 1988, p. 291, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" near the middle of paragraph (2).

50-8-142. Employees.

The commissioner of community affairs may appoint employees as may be necessary to implement such powers and duties as are described by this article. The employees of the Office of Rural Development shall be in the unclassified service as defined by Code Section 45-20-2. The commissioner of community affairs shall describe the duties and fix the compensation for all such employees. (Code 1981, § 50-8-142, enacted by Ga. L. 1988, p. 291, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-103/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "shall be in the unclassified service as defined by Code Section 45-20-2" for "shall be unclassified positions for the purposes of the State Personnel Administration and shall serve at the pleasure of the commissioner of community affairs" in the second sentence of this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

ARTICLE 7

GRANTS PROMOTING E-85 GASOLINE

50-8-170. Definitions; facilitating E-85 projects; implementation of grant program.

(a) As used in this Code section, the term:

(1) "Board" means the Board of Community Affairs.

(2) "Department" means the Department of Community Affairs.

(3) "E-85 gasoline" means a blend of ethanol and gasoline that by volume consists of not less than 70 percent nor more than 85 percent ethanol which meets the American Society of Testing and Materials (ASTM) D5798-99 Standard Specification for Fuel Ethanol for Automotive Spark-Ignition Engines.

(4) "E-85 project" means installing, replacing, or converting motor fuel storage and dispensing equipment at sites where motor fuel is stored and dispensed for retail sale such that the installed, replacement, or converted equipment shall be used exclusively for storing and dispensing E-85 gasoline for retail sale for a period of not less than five consecutive years.

(5) "Gasoline" has the meaning provided by Code Section 48-9-2.

(6) "Motor fuel" has the meaning provided by Code Section 48-9-2.

(7) "Motor fuel storage and dispensing equipment" means tanks, pumps, dispensers, pipes, hoses, tubes, lines, fittings, valves, filters, seals, covers, and other associated equipment used in storing and dispensing motor fuel for retail sale.

(8) "Retail sale" means the sale for consumption, and not for resale, at a retail outlet serving the motoring public.

(b) The General Assembly finds and declares that facilitating E-85 projects through a program established by the department would return a substantial benefit to the state by promoting investment of private capital to provide improved air quality in this state through reduction of combustion of gasoline in motor vehicles; aid compliance with federal air quality standards; promote the use of alternative domestic fuels that reduce dependence on foreign petroleum supplies; and enable increased availability of motor fuels crucial to the state's economy, welfare, and public safety, which may be especially critical in times of natural disaster or international crisis.

(c) The department shall establish a grant program to fund the costs of E-85 projects, subject to availability of funds. The department shall

enter into an intergovernmental contract with the Georgia Environmental Finance Authority for purposes of developing, implementing, and administering such program and disbursing any grant moneys thereunder, and the authority is authorized to and shall develop, implement, and administer such program and disburse any grant moneys subject to the following minimum criteria:

(1) Each grant applicant shall submit a project plan that shall be subject to approval by the Georgia Environmental Finance Authority;

(2) A grant for any approved project shall not exceed \$20,000.00 or 33 1/3 percent of the planned cost of the project, whichever is less, and the applicant shall be required to pay the remainder of the project cost. This paragraph shall not prohibit the applicant from using grants or loans from federal government or private sources to pay for such remainder of the project cost;

(3) Construction for any approved project shall begin not later than six months after the date of the grant;

(4) Any approved project shall be completed not later than one year after the date of the grant;

(5) A project shall be used for the purposes and period required for such project as specified in paragraph (4) of subsection (a) of this Code section; and

(6) Grant money for a project shall be refunded to the state with interest at the legal rate not later than two years after any failure to meet the requirements of paragraph (3), (4), or (5) of this subsection.

(d) The Georgia Environmental Finance Authority shall adopt such rules and regulations as are reasonable and necessary to implement and administer the grant program established under this Code section.

(e) No grants shall be made under this Code section on or after July 1, 2009. (Code 1981, § 50-8-170, enacted by Ga. L. 2007, p. 644, § 1/SB 157; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia

Environmental Facilities Authority” twice in subsection (c) and near the beginning of subsection (d).

ARTICLE 8

REGIONAL ECONOMIC ASSISTANCE PROJECTS

50-8-193. State agencies encouraged to give certified projects priority in licensing and processing grants and loans.

The Department of Community Affairs shall certify that a project has received a certificate of compliance as a REAP to the Department of Natural Resources; the Department of Economic Development; the Department of Transportation; the Department of Revenue; the Department of Labor; the Georgia Environmental Finance Authority; and any other state department, agency, or instrumentality which requests such certification. All state agencies, departments, and instrumentalities are encouraged to give priority in their permitting and licensing and in the processing of grants and loans to local governments for projects which have received a certification. (Code 1981, § 50-8-193, enacted by Ga. L. 1999, p. 1206, § 2; Ga. L. 2004, p. 690, § 40; Ga. L. 2008, p. 363, § 3/HB 1280; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” near the middle of the first sentence.

ARTICLE 10

MARTIN LUTHER KING, JR., ADVISORY COUNCIL

Effective date. — This article became effective May 9, 2011.

50-8-240. Creation; members; vacancies; quorum.

(a) There is created within the Department of Community Affairs the Martin Luther King, Jr., Advisory Council.

(b) The council shall consist of nine members as follows:

- (1) The commissioner of community affairs or his or her designee;
- (2) Six members to be appointed by the Governor, two of whom shall be between the ages of 18 and 22 years;
- (3) One member to be appointed by the President of the Senate; and
- (4) One member to be appointed by the Speaker of the House of Representatives.

(c) Members shall serve four-year terms. No member of the council shall serve more than two consecutive terms.

(d) Vacancies in the membership of the council shall be filled for the balance of the unexpired term by the appointing authority.

(e) The council shall select annually a chairperson from among its membership.

(f) Members of the council shall be subject to removal from office by the appointing authority when the actions or condition of a member shall be considered as good cause for removal.

(g) A majority of the council shall constitute a quorum for the transaction of business.

(h) Members of the council shall serve without compensation but, to the extent moneys are received from voluntary contributions through a not for profit corporation, shall be eligible to receive reimbursement for mileage and other expenses actually incurred in performance of their duties in accordance with the rates and standards for reimbursement of state employees. (Code 1981, § 50-8-240, enacted by Ga. L. 2011, p. 255, § 1/SB 141; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

50-8-241. Duties.

The Martin Luther King, Jr., Advisory Council shall have the following duties:

(1) To promote racial harmony, understanding, respect, and good will among all citizens;

(2) To promote principles of nonviolence, peace, and social justice;

(3) To promote among the people of Georgia, by appropriate activities, both awareness and appreciation of the Civil Rights movement and advocacy of the principles and legacy of Martin Luther King, Jr.;

(4) To develop, coordinate, and advise the state of appropriate ceremonies and activities relating to the observance of the birthday of Martin Luther King, Jr., including, without limitation, providing advice and assistance to local governments and private organizations;

(5) To enable the people of Georgia to reflect on the life and teachings of Martin Luther King, Jr., through educational endeavors, cultural performances, exhibitions, and events that are multiethnic and family oriented; and

(6) To prepare an annual report for the Governor and the General Assembly detailing the actions taken to fulfill these responsibilities

and duties. (Code 1981, § 50-8-241, enacted by Ga. L. 2011, p. 255, § 1/SB 141; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in the introductory paragraph.

50-8-242. Authority to establish not for profit corporation and appoint members.

The Department of Community Affairs is authorized to establish a not for profit corporation and to appoint the members of the board of trustees of such corporation for the purpose of sustaining and furthering the purpose of the council. (Code 1981, § 50-8-242, enacted by Ga. L. 2011, p. 255, § 1/SB 141.)

CHAPTER 9

GEORGIA BUILDING AUTHORITY

Article 1		Sec.	
General Provisions		50-9-13.	Exemption from taxation.
Sec.			
50-9-9.	Disruptions of state employees; protection of property.		

ARTICLE 1

GENERAL PROVISIONS

50-9-9. Disruptions of state employees; protection of property.

(a) In that it has been previously declared by state law that the use of the capitol building and grounds shall be limited to departments of state government and to state and national political organizations and for no other purposes unless specifically authorized by law and in that the employees of the departments of state government, and of state agencies, authorities, commissions, boards, bureaus, and other state entities located in the capitol building and other state buildings are engaged in the business of the citizens of the state and should not be unreasonably interrupted in the performance of their public duties, it is, therefore, in the best interest of the state and its citizens that a public policy against such unreasonable disruptions of state employees in the performance of their official duties be declared, and it is in this Code section so declared.

(b) Without the express written consent of the director of the Georgia Building Authority, his or her designee, or his or her successor in office

first having been received and except as otherwise provided by state law, it shall be illegal for any person, firm, group, organization, or other entity to beg, panhandle, solicit, or to sell goods, wares, or any other objects or services within any buildings or on the grounds, sidewalks, or other ways owned by or under the control of the state, its agencies, authorities, commissions, boards, bureaus, or other state entities.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) The authority or its legal successor shall establish the rules and regulations for and carry out the implementation of this Code section.

(e) Notwithstanding anything contained in this Code section or elsewhere, subsections (a) and (b) of this Code section shall not be applicable to persons, firms, organizations, corporations, or other entities doing business with the Department of Administrative Services or the activities in relation thereto; and this Code section shall be permissive in nature.

(f) Certified law enforcement officers employed by the Department of Public Safety and security personnel employed by or under contract with that department shall exercise such powers and duties as are authorized by law to keep watch over and protect the property of the authority in that area designated as Capitol Square by Code Section 50-2-28. Certified law enforcement officers employed by such department shall have jurisdiction to enforce all laws within such area. (Ga. L. 1969, p. 233, § 1; Ga. L. 1975, p. 885, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 554, § 1; Ga. L. 2010, p. 137, § 3/HB 1074.)

The 2010 amendment, effective July 1, 2010, inserted “or her” twice near the beginning of subsection (b); deleted “be applicable only to the buildings, facilities, and improvements adjacent to the state capitol and shall” preceding “not be” in the middle of subsection (e); and substituted the present provisions of subsection (f) for the former provisions, which read: “The authority shall be authorized to employ security guards known as the Georgia Building Authority Police to keep watch over and protect the properties of the authority and such other properties as may be administered by, or as may be directed by, the authority. The Georgia Building Authority Police employed as

provided by this Code section shall be employees of and compensated by the authority. The Georgia Building Authority Police employed pursuant to this Code section shall wear such insignia and uniforms and carry such identification as prescribed by the authority and shall be authorized to carry weapons and, while in the performance of their duties, shall have the same powers of arrest, shall have the same powers to enforce law and order, and shall be authorized to exercise such powers and duties as are authorized by law for security guards of the Security Guard Division of the Department of Public Safety.”

50-9-13. Exemption from taxation.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and are a public purpose and the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this article and Article 2 of this chapter. This state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings erected or acquired by it or any fees, rentals, or other charges for the use of such buildings or other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this Code section shall include an exemption from all sales and use tax on property purchased, leased, or used by the authority. (Ga. L. 1951, p. 699, § 21; Ga. L. 1982, p. 3, § 50; Ga. L. 2010, p. 317, § 1/HB 333.)

The 2010 amendment, effective July 1, 2010, added the last sentence.

CHAPTER 10**GEORGIA DEVELOPMENT AUTHORITY**

Sec.

50-10-5. Powers and duties.

50-10-5. Powers and duties.

(a)(1) In addition to, and not in limitation of, the powers granted in this chapter, the Georgia Development Authority shall have and may exercise the power and authority to:

(A) Guarantee or insure loans made for rural rehabilitation purposes or for agricultural and industrial development, provided that, with respect to any such guarantee or contract of insurance made by the authority involving an asset provided to the authority under Public Law 499, Eighty-first Congress, Second Session, the authority shall maintain a reserve or insurance fund out of such assets in an amount not less than 15 percent of the contingent liability existing by reason of any such contracts of insurance or guarantee. The reserve or insurance fund of the authority may be invested; and

(B) Borrow money from funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to 33 U.S.C.A. Section 1381, et seq., and administered by the Georgia Environmental Finance Authority pursuant to paragraph (30) of subsection (b) of Code Section 50-23-5 and to use the same to make loans to finance eligible water pollution control projects which are designed to mitigate pollution from agricultural operations. The borrowing of such moneys and administration of such loans made by the Georgia Development Authority shall be in accordance with federal requirements.

(2) Any funds or assets of the authority obtained under the provisions of Public Law 499, Eighty-first Congress, Second Session, or funds derived from such funds or assets, shall not be liable for any deficit, default, or failure of any environmental facility project and the authority shall not be obligated on, responsible for, or liable on any obligation of any kind entered into relating to environmental facility projects. The authority shall only be responsible for those obligations related to the funds or assets of the authority received under Public Law 499, Eighty-first Congress, Second Session and funds or assets derived therefrom.

(b) In addition to the powers granted in Code Section 50-10-4 and subsection (a) of this Code section, the authority shall have the power:

(1) To bring and defend an action in all courts, the original jurisdiction and venue of such actions against the authority being in the Superior Court of Fulton County;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, and to make loans, to provide security for loans, or to guarantee loans for the purpose of developing agriculture or industry; provided, however, that the authority shall not make any such loan or guarantee or provide any such security or issue any bonds, notes, or other obligations in connection therewith, unless the authority shall adopt a resolution finding that the project for which such loan or guarantee is to be made or for which such security is to be provided will promote the development of agriculture or industry;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their compensation;

(6) To borrow money to further or carry out its public purpose and to issue revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(7) To collect fees and charges in connection with its loans, commitments, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(8) To invest, subject to any agreement with bondholders, moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of federal savings and loan associations and state building and loan associations located

within the state which have deposits insured by the Federal Savings and Loan Insurance Corporation or any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the federal Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys and provided, further, that all moneys in each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall be continuously and fully secured by obligations described in subparagraph (A), (B), (C), or (D) of this paragraph, equal at all times to the amount of the

interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangements;

(9) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(10) To invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (8) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments schedule for which such moneys are to be applied;

(11) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(12) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine;

(13) To adopt bylaws governing the conduct of business by the authority, the election of officers of the authority other than the chairman, the duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(14) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(15) To do all things necessary or convenient to carry out the powers conferred by this chapter; and

(16) To designate three or more of its number to constitute an executive committee who, to the extent provided in such resolution or in the bylaws of the authority, shall have and may exercise the

powers of the authority in the management of the affairs and property of the authority and the exercise of its power.

(c) The authority shall not have the power of eminent domain.

(d) No person shall be eligible to receive a loan from the first-time farmer tax-free note program of the authority, or any similar loan program established by the authority after July 1, 1986, unless such person has demonstrated to the satisfaction of the authority that such person has the ability to and intends to derive at least 25 percent of his or her livelihood from agricultural operations. (Ga. L. 1986, p. 656, § 1; Code 1981, § 50-10-5, enacted by Ga. L. 1986, p. 705, § 4; Ga. L. 2001, p. 1225, § 1; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia

Environmental Facilities Authority" in the middle of the first sentence of subparagraph (a)(1)(B).

CHAPTER 12

COMMISSIONS AND OTHER AGENCIES

Article 2

Georgia Council for the Arts

PART 1

GENERAL PROVISIONS

Sec.

- 50-12-22. Appointment of members; terms; vacancies; expenses; removal; chairman; meetings.
- 50-12-23. Powers and duties generally.
- 50-12-24. Annual report.
- 50-12-25. Powers and authority of Department of Economic Development as to council.
- 50-12-26. Appointment of personnel for council.

Article 4

Halls of Fame

PART 2

GEORGIA GOLF HALL OF FAME

50-12-64 through 50-12-69.1 [Repealed].

PART 3

GEORGIA AVIATION HALL OF FAME

Subpart 1

General Provisions

Sec.

- 50-12-71. Appointment, terms, and expenses of board members.

Article 5

Georgia Commission on Women

- 50-12-84. Annual report.

ARTICLE 2

GEORGIA COUNCIL FOR THE ARTS

Law reviews. — For article, “Intellectual Property Checklist for Marketing the Recording Artist Online,” see 18 J. Intell. Prop. L. 541 (2011). For article, “Clearing the Way: Acquiring Rights and Approvals for Music Use in Media Applications,” see 18 J. Intell. Prop. L. 561 (2011).

PART 1

GENERAL PROVISIONS

50-12-22. Appointment of members; terms; vacancies; expenses; removal; chairman; meetings.

(a) The council shall consist of two members from each congressional district and four members representing the state at large who shall be appointed by the Governor. All members shall have demonstrated an interest in the arts. Except for certain members who were appointed in 1979, the term of office of each member shall be three years. In 1979, eight members were appointed for terms of office of one year, eight members for terms of two years, and eight members for terms of three years. The initial appointments were made so that no more than one member from each congressional district or two state-at-large members' terms of office would expire in any one year. Vacancies shall be filled for unexpired terms in the same manner as the original appointment. Membership on the council shall be limited to two successive three-year terms, and a member may be reappointed after a lapse of one year. No member initially appointed to one-year or two-year terms of office shall be prohibited from serving two consecutive three-year terms of office.

(b) Members shall be entitled to reimbursement for expenses incurred in the work of the council when authorized in advance by the commissioner of economic development.

(c) Active and continuing participation by members of the council is needed. Any member who fails to attend three regularly scheduled, consecutive meetings may be removed by the council.

(d) A chairman shall be appointed annually by the Governor for a term ending on June 30 of the year following such appointment.

(e) The council shall meet annually, or more often, on the call of the chairman. (Ga. L. 1976, p. 748, § 3; Ga. L. 1979, p. 388, § 1; Ga. L. 1986, p. 174, § 2; Ga. L. 1990, p. 1903, § 12; Ga. L. 2011, p. 514, § 1/HB 264.)

The 2011 amendment, effective July 1, 2011, substituted “commissioner of economic development” for “director of the

Office of Planning and Budget” at the end of subsection (b).

50-12-23. Powers and duties generally.

The council shall advise the Governor through the Department of Economic Development concerning methods and programs to:

- (1) Stimulate and encourage the study and development of the arts as well as public interest and participation therein;
- (2) Encourage public interest in the cultural heritage of this state;
- (3) Expand this state’s cultural resources;
- (4) Encourage and assist freedom of artistic expression essential for the well-being of the arts;
- (5) Assist the communities and organizations within this state in originating and creating their own cultural and artistic programs; and
- (6) Survey public and private institutions engaged within this state in cultural activities, including, but not limited to, architecture, dance, folk arts and applied arts and crafts, literature, music, painting, photography, sculpture, and theater. (Ga. L. 1976, p. 748, § 4; Ga. L. 1986, p. 174, § 2; Ga. L. 2011, p. 514, § 2/HB 264.)

The 2011 amendment, effective July 1, 2011, substituted “this state” for “the state” in paragraphs (2), (5), and (6); substituted “Department of Economic Development” for “Office of Planning and Bud-

get” in the introductory paragraph; substituted “this state’s” for “the state’s” in paragraph (3); and inserted a comma following “activities” in paragraph (6).

50-12-24. Annual report.

The council shall submit an annual report to the Governor and to the commissioner of economic development concerning the appropriate methods to encourage participation in and appreciation of the arts in order to meet the legitimate needs and aspirations of persons in all parts of this state. (Ga. L. 1976, p. 748, § 5; Ga. L. 1986, p. 174, § 2; Ga. L. 2011, p. 514, § 3/HB 264.)

The 2011 amendment, effective July 1, 2011, in this Code section, inserted “and to the commissioner of economic develop-

ment” near the middle, and substituted “this state” for “the state” at the end.

50-12-25. Powers and authority of Department of Economic Development as to council.

The Department of Economic Development shall have the powers and authority necessary to carry out the purposes established by this article, including, but not limited to, the powers:

- (1) To establish overall policy for grant awards, evaluations, and programs recommended by the council;
- (2) To hold hearings, make and sign any agreements, and do and perform any acts which may be necessary, desirable, or proper to carry out the purposes of this article;
- (3) To request from any department, division, board, bureau, commission, or other agency of the state such reasonable assistance and data as will enable it properly to carry out its powers and duties;
- (4) To accept, on behalf of the state, any federal funds granted by act of Congress or by executive order for all or any of the purposes of this article; and, upon appropriation by the General Assembly, to expend such funds for the purposes set forth in the appropriations Act;
- (5) To accept any grants, gifts, donations, or bequests for all or any of the purposes of this article;
- (6) To propose methods to encourage private initiative in the arts; and
- (7) To advise and consult with the Governor; the General Assembly; national foundations; and other local, state, and federal departments and agencies on methods to coordinate and assist existing resources and facilities, with the purpose of fostering artistic and cultural endeavors generally. (Ga. L. 1976, p. 748, § 6; Ga. L. 1986, p. 174, § 2; Ga. L. 1992, p. 6, § 50; Ga. L. 2011, p. 514, § 4/HB 264.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Economic Development” for “Office of Planning and Budget” in the introductory paragraph.

Law reviews. — For article, “Administrative Law,” see 63 Mercer L. Rev. 47 (2011).

50-12-26. Appointment of personnel for council.

The commissioner of economic development shall select and appoint such personnel as the commissioner shall determine to be necessary to support the council and the programs undertaken pursuant to this article. (Ga. L. 1976, p. 748, § 7; Ga. L. 1986, p. 174, § 2; Ga. L. 2011, p. 514, § 5/HB 264.)

The 2011 amendment, effective July 1, 2011, in this Code section, substituted “commissioner of economic development” for “director of the Office of Planning and

Budget” at the beginning, and substituted “commissioner” for “director” in the middle.

ARTICLE 4 HALLS OF FAME

PART 2

GEORGIA GOLF HALL OF FAME

50-12-64 through 50-12-69.1.

Reserved. Repealed by Ga. L. 2010, p. 753, § 3, effective June 2, 2010.

Editor’s notes. — This part was based on Ga. L. 1982, p. 1153, § 1; Ga. L. 1983, p. 3, § 39; Ga. L. 1994, p. 309, § 1; Ga. L. 1996, p. 353, § 1; Ga. L. 2005, p. 306, § 6/SB 125; Ga. L. 2009, p. 745, § 1/SB 97.

Ga. L. 2010, p. 753, § 4, not codified by the General Assembly, provides: “The state, acting by and through its State Properties Commission, shall be authorized to sell by competitive bid all real property owned or controlled by the Geor-

gia Golf Hall of Fame or its authority or board for a consideration of not less than the fair market value as determined by the State Properties Commission and not less than the amount of the outstanding bond indebtedness associated with the Georgia Golf Hall of Fame. Such sale shall be as provided in Code Section 50-16-39. Such authorization shall expire three years after the effective date of this Act.” This Act became effective June 2, 2010.

PART 3

GEORGIA AVIATION HALL OF FAME

Subpart 1

General Provisions

50-12-71. Appointment, terms, and expenses of board members.

(a) The board shall be composed of 17 members to be appointed as follows:

(1) Sixteen members shall be appointed by the Governor, five members for initial terms of two years; five members for initial terms of three years; four members for initial terms of four years; and two members provided for in 1991 for initial terms of five years. Seven of the members appointed by the Governor may reside in any area of the state. Of the remaining nine members appointed by the Governor, one member shall reside in and be appointed from each of the nine districts provided in subsection (b) of this Code section. Successors to

such members shall be appointed by the Governor for terms of six years; and

(2) One member shall be appointed by the Commander of the Warner Robins Air Logistics Center at Robins Air Force Base in Houston County, Georgia, for an initial term of four years, and successors shall be appointed by the Governor for terms of six years. This member may reside in any area of the state.

(b) For the purpose of appointing nine members of the board, the state shall be divided into nine districts based upon the ZIP Code areas as designated by the United States Postal Service and as such areas exist on January 1, 1989. The nine districts shall be composed as follows:

District 1:

ZIP Code Areas 305 and 307;

District 2:

ZIP Code Area 306;

District 3:

ZIP Code Areas 300, 301, 302, and 303;

District 4:

ZIP Code Areas 304, 308, and 309;

District 5:

ZIP Code Areas 310 and 312;

District 6:

ZIP Code Areas 318 and 319;

District 7:

ZIP Code Area 317;

District 8:

ZIP Code Area 316; and

District 9:

ZIP Code Areas 313, 314, and 315.

(c) Of the 17 members of the board, at least 11 members shall have experience in and be representative of the aviation industry or profession. Initial appointments shall be made prior to July 1, 1989, except that the additional members provided for in 1991 shall be appointed prior to October 1, 1991. In the event a vacancy occurs in the member-

ship of the board, the Governor shall promptly fill the same for the unexpired term. A majority of the members shall constitute a quorum for the transaction of business.

(d) The board shall elect a chairperson, a vice-chairperson, and such other officers as it deems advisable from its own membership. The members shall receive no compensation for their services but shall be reimbursed for expenses incurred in attending meetings of the board. The board is authorized to employ such personnel as it deems necessary to enable it to carry out its duties and functions; however, such employees may not be subject to the state system of personnel administration provided for in Chapter 20 of Title 45. The board shall meet once each quarter and at such other times as the board deems necessary but not more than eight times annually. (Code 1981, § 50-12-71, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 1991, p. 1773, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-104/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (d), substituted “chairperson, a vice-chairperson” for “chairman, a vice-chairman” in the first sentence, and substituted “state system of personnel administration provided for in Chapter 20 of Title 45” for “State Personnel Administration of employment and employment administration” in the third sentence.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

ARTICLE 5

GEORGIA COMMISSION ON WOMEN

50-12-84. Annual report.

The commission shall publish in print or electronically an annual report summarizing the activities, findings, and recommendations of the commission. The report shall be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and all members of the Senate and the House of Representatives not later than November 1 of each year. (Code 1981, § 50-12-84, enacted by Ga. L. 1992, p. 820, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence.

CHAPTER 13

ADMINISTRATIVE PROCEDURE

Article 1

Sec.

General Provisions

- Sec.
50-13-2. (For effective date, see note.)
Definitions.
50-13-4. Procedural requirements for adoption, amendment, or repeal of rules; emergency rules; limitation on action to contest rule; legislative override.
50-13-4.1. Agency reporting on required regulation.
50-13-12. (Repealed effective January 1, 2013) Department of Revenue to hold hearing when demanded by aggrieved taxpayer; election of remedies [Repealed].
50-13-13. (For effective date, see note.) Opportunity for hearing in con-

tested cases; notice; counsel; subpoenas; record; enforcement powers; revenue cases.

Article 2

Office of State Administrative Hearings

- 50-13-40. Office created; chief state administrative law judge.
50-13-42. (For effective date, see note.) Applicability of article.
50-13-44. Administrative transfer of individuals to Office of State Administrative Hearings; approval of chief state administrative law judge; funding of transferred positions; transferred employees status.

ARTICLE 1

GENERAL PROVISIONS

50-13-1. Short title; purpose.

JUDICIAL DECISIONS

Cited in Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009).

50-13-2. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(1) (For effective date, see note.) “Agency” means each state board, bureau, commission, department, activity, or officer authorized by law expressly to make rules and regulations or to determine contested cases, except the General Assembly; the judiciary; the Governor; the State Board of Pardons and Paroles; the State Financing and Investment Commission; the State Properties Commission; the Board of Bar Examiners; the Board of Corrections and its penal institutions; the State Board of Workers’ Compensation; all public authorities except as otherwise expressly provided by law; the State

Personnel Board; the Department of Administrative Services or commissioner of administrative services; the Technical College System of Georgia; the Department of Revenue when conducting hearings relating to alcoholic beverages, tobacco, or bona fide coin operated amusement machines or any violations relating thereto; the Georgia Tobacco Community Development Board; the Georgia Higher Education Savings Plan; any school, college, hospital, or other such educational, eleemosynary, or charitable institution; or any agency when its action is concerned with the military or naval affairs of this state. The term "agency" shall include the State Board of Education and Department of Education, subject to the following qualifications:

(A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid rules adopted by the State Board of Education and Department of Education prior to January 1, 1990, are ratified and validated and shall be effective until January 1, 1991, whether or not such rules were adopted in compliance with the requirements of this chapter; and

(B) Effective January 1, 1991, any rule of the State Board of Education or Department of Education which has not been proposed, submitted, and adopted in accordance with the requirements of this chapter shall be void and of no effect.

(2) "Contested case" means a proceeding, including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(2.1) "Electronic" means, without limitation, analog, digital, electronic, magnetic, mechanical, optical, chemical, electromagnetic, electromechanical, electrochemical, or other similar means.

(3) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(3.1) "Mailed" includes electronic means of communication.

(3.2) "Mailing list" includes electronic means of distribution.

(4) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(5.1) "Record" means information created, transmitted, received, or stored either in human perceivable form or in a form that is retrievable in human perceivable form.

(6) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(B) Declaratory rulings issued pursuant to Code Section 50-13-11;

(C) Intra-agency memoranda;

(D) Statements of policy or interpretations that are made in the decision of a contested case;

(E) Rules concerning the use or creation of public roads or facilities, which rules are communicated to the public by use of signs or symbols;

(F) Rules which relate to the acquiring, sale, development, and management of the property, both real and personal, of the state or of an agency;

(G) Rules which relate to contracts for the purchases and sales of goods and services by the state or of an agency;

(H) Rules which relate to the employment, compensation, tenure, terms, retirement, or regulation of the employees of the state or of an agency;

(I) Rules relating to loans, grants, and benefits by the state or of an agency; or

(J) The approval or prescription for the future of rates or prices. (Ga. L. 1964, p. 338, § 2; Ga. L. 1965, p. 283, §§ 2-4; Ga. L. 1975, p. 404, § 3; Ga. L. 1980, p. 1573, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 1463, §§ 6, 13; Ga. L. 1985, p. 283, § 1; Ga. L. 1990, p. 794, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 404, § 1; Ga. L. 1997, p. 695, § 1; Ga. L. 1999, p. 721, § 2; Ga. L. 2000, p. 1619, § 1; Ga. L. 2001, p. 76, § 4; Ga. L. 2005, p. 175, § 3/HB 98; Ga. L. 2008, p. 335, § 10/SB 435; Ga. L. 2010, p. 470, § 8/SB 454; Ga. L. 2012, p. 446, § 2-105/HB 642; Ga. L. 2012, p. 831, § 14/HB 1071.)

Delayed effective date. — Paragraph (1), as set out above, becomes effective January 1, 2013. For version of paragraph (1) in effect until January 1, 2013, see the 2012 amendment note.

The 2010 amendment, effective July 1, 2010, inserted “relating to bona fide coin operated amusement machines or any violations relating thereto” near the end of the first sentence of paragraph (1).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, deleted “(Merit System)” following “State Personnel Board” near the middle of the first sentence of paragraph (1). The second 2012 amendment, effective January 1, 2013, substituted “beverages, tobacco, or bona fide” for “beverages or relating to bona fide” near the middle of the first sentence of paragraph (1).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For article, “Administrative Law,” see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION CONTESTED CASE

General Consideration

Judicial Council of Georgia and Board of Court Reporting were part of the judiciary and therefore excluded from coverage. — Judicial Council of Georgia and the Board of Court Reporting of the Judicial Council of Georgia fell within “the judiciary,” as that term was used in O.C.G.A. § 50-13-2(1) of the Administrative Procedure Act, and therefore were exempt from the coverage of the Act and immune from a suit challenging a court reporter ethics rule the board adopted. *Judicial Council v. Brown & Gallo, LLC*, 288 Ga. 294, 702 S.E.2d 894 (2010).

Contested Case

Landowners not entitled to a hearing regarding neighbors’ planned

dock. — Landowners’ claims against the state for declaratory judgment, mandamus, an unconstitutional taking, and due process and equal protection violations, all arising out of the issuance of a license to their neighbors to build a private dock in a coastal marshland area, all failed. The Coastal Marshlands Protection Act did not apply to a private dock, pursuant to O.C.G.A. § 12-5-295(7); therefore, the landowners were not entitled to a hearing under the Act pursuant to O.C.G.A. § 12-5-283(b) and the Administrative Procedure Act. *Hitch v. Vasarhelyi*, 302 Ga. App. 381, 691 S.E.2d 286 (2010).

50-13-4. Procedural requirements for adoption, amendment, or repeal of rules; emergency rules; limitation on action to contest rule; legislative override.

(a) Prior to the adoption, amendment, or repeal of any rule, other than interpretive rules or general statements of policy, the agency shall:

(1) Give at least 30 days' notice of its intended action. The notice shall include an exact copy of the proposed rule and a synopsis of the proposed rule. The synopsis shall be distributed with and in the same manner as the proposed rule. The synopsis shall contain a statement of the purpose and the main features of the proposed rule, and, in the case of a proposed amendatory rule, the synopsis also shall indicate the differences between the existing rule and the proposed rule. The notice shall also include the exact date on which the agency shall consider the adoption of the rule and shall include the time and place in order that interested persons may present their views thereon. The notice shall also contain a citation of the authority pursuant to which the rule is proposed for adoption and, if the proposal is an amendment or repeal of an existing rule, the rule shall be clearly identified. The notice shall be mailed to all persons who have requested in writing that they be placed upon a mailing list which shall be maintained by the agency for advance notice of its rule-making proceedings and who have tendered the actual cost of such mailing as from time to time estimated by the agency;

(2) Afford to all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons who will be directly affected by the proposed rule, by a governmental subdivision, or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption;

(3) In the formulation and adoption of any rule which will have an economic impact on businesses in the state, reduce the economic impact of the rule on small businesses which are independently owned and operated, are not dominant in their field, and employ 100 employees or less by implementing one or more of the following actions when it is legal and feasible in meeting the stated objectives of the statutes which are the basis of the proposed rule:

(A) Establish differing compliance or reporting requirements or timetables for small businesses;

(B) Clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses;

(C) Establish performance rather than design standards for small businesses; or

(D) Exempt small businesses from any or all requirements of the rules; and

(4) In the formulation and adoption of any rule, an agency shall choose an alternative that does not impose excessive regulatory costs on any regulated person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the statutes which are the basis of the proposed rule.

(b) If any agency finds that an imminent peril to the public health, safety, or welfare, including but not limited to, summary processes such as quarantines, contrabands, seizures, and the like authorized by law without notice, requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. Any such rule adopted relative to a public health emergency shall be submitted as promptly as reasonably practicable to the House of Representatives and Senate Committees on Judiciary. The rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under paragraphs (1) and (2) of subsection (a) of this Code section is not precluded; provided, however, that such a rule adopted pursuant to discharge of responsibility under an executive order declaring a state of emergency or disaster exists as a result of a public health emergency, as defined in Code Section 38-3-3, shall be effective for the duration of the emergency or disaster and for a period of not more than 120 days thereafter.

(c) It is the intent of this Code section to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in subsection (b) of this Code section, the provisions of this Code section are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Code section repeals or diminishes additional requirements imposed by law or diminishes or repeals any summary power granted by law to the state or any agency thereof.

(d) No rule adopted after April 3, 1978, shall be valid unless adopted in exact compliance with subsections (a) and (e) of this Code section and in substantial compliance with the remainder of this Code section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this Code section must be commenced within two years from the effective date of the rule.

(e) The agency shall transmit the notice provided for in paragraph (1) of subsection (a) of this Code section to the legislative counsel. The notice shall be transmitted at least 30 days prior to the date of the agency's intended action. Within three days after receipt of the notice,

if possible, the legislative counsel shall furnish the presiding officers of each house with a copy of the notice, and the presiding officers shall assign the notice to the chairperson of the appropriate standing committee in each house for review and any member thereof who makes a standing written request. In the event a presiding officer is unavailable for the purpose of making the assignment within the time limitations, the legislative counsel shall assign the notice to the chairperson of the appropriate standing committee. The legislative counsel shall also transmit within the time limitations provided in this subsection a notice of the assignment to the chairperson of the appropriate standing committee. Each standing committee of the Senate and the House of Representatives is granted all the rights provided for interested persons and governmental subdivisions in paragraph (2) of subsection (a) of this Code section.

(f)(1) In the event a standing committee to which a notice is assigned as provided in subsection (e) of this Code section files an objection to a proposed rule prior to its adoption and the agency adopts the proposed rule over the objection, the rule may be considered by the branch of the General Assembly whose committee objected to its adoption by the introduction of a resolution for the purpose of overriding the rule at any time within the first 30 days of the next regular session of the General Assembly. It shall be the duty of any agency which adopts a proposed rule over such objection so to notify the presiding officers of the Senate and the House of Representatives, the chairpersons of the Senate and House committees to which the rule was referred, and the legislative counsel within ten days after the adoption of the rule. In the event the resolution is adopted by such branch of the General Assembly, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, to consider the resolution for the purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of his or her veto, the rule shall remain in effect. In the event of his or her approval, the rule shall be void on the day after the date of his or her approval.

(2) In the event each standing committee to which a notice is assigned as provided in subsection (e) of this Code section files an objection to a proposed rule prior to its adoption by a two-thirds' vote of the members of the committee who were voting members on the

tenth day of the current session, after having given public notice of the time, place, and purpose of such vote at least 48 hours in advance, as well as the opportunity for members of the public including the promulgating agency, to have a reasonable time to comment on the proposed committee action at the hearing, the effectiveness of such rule shall be stayed until the next legislative session at which time the rule may be considered by the General Assembly by the introduction of a resolution in either branch of the General Assembly for the purpose of overriding the rule at any time within the first 30 days of the next regular session of the General Assembly. In the event the resolution is adopted by the branch of the General Assembly in which it was introduced, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, to consider the resolution for the purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of his or her veto, the rule shall remain in effect. In the event of his or her approval, the rule shall be void on the day after the date of his or her approval. If after the thirtieth legislative day of the legislative session of which the challenged rule was to be considered the General Assembly has not considered an override of the challenged rule pursuant to this subsection, the rule shall then immediately take effect.

(g)(1) Subsection (f) of this Code section shall not apply to the Environmental Protection Division of the Department of Natural Resources as to any rule for which, as part of the notice required by paragraph (1) of subsection (a) of this Code section, the director of the division certifies that such rule is required for compliance with federal statutes or regulations or to exercise certain powers delegated by the federal government to the state to implement federal statutes or regulations, but paragraph (2) of this subsection shall apply to the Environmental Protection Division of the Department of Natural Resources as to any rule so certified. As part of such certification, the director shall cite the specific section or sections of federal statutes or regulations which the proposed rule is intended to comply with or implement. General references to the name or title of a federal statute or regulation shall not suffice for the purposes of this paragraph. Any proposed rule or rules that are subject to this paragraph shall be noticed separately from any proposed rule or rules that are not subject to this paragraph.

(2) In the event the chairperson of any standing committee to which a proposed rule certified by the director of the division pursuant to paragraph (1) of this subsection is assigned notifies the director that the committee objects to the adoption of the rule or has questions concerning the purpose, nature, or necessity of such rule, it shall be the duty of the director to consult with the committee prior to the adoption of the rule.

(h) The provisions of subsections (e) and (f) of this Code section shall apply to any rule of the Department of Public Health that is promulgated pursuant to Code Section 31-2A-11 or 31-45-10, except that the presiding officer of the Senate is directed to assign the notice of such a rule to the chairperson of the Senate Science and Technology Committee and the presiding officer of the House of Representatives is directed to assign the notice of such a rule to the chairperson of the House Committee on Industrial Relations. As used in this subsection, the term “rule” shall have the same meaning as provided in paragraph (6) of Code Section 50-13-2 and shall include interpretive rules and general statements of policy, notwithstanding any provision of subsection (a) of this Code section to the contrary.

(i) This Code section shall not apply to any comprehensive state-wide water management plan or revision thereof prepared by the Environmental Protection Division of the Department of Natural Resources and proposed, adopted, amended, or repealed pursuant to Article 8 of Chapter 5 of Title 12; provided, however, that this Code section shall apply to any rules or regulations implementing such a plan. (Ga. L. 1964, p. 338, § 4; Ga. L. 1965, p. 283, § 6; Ga. L. 1977, p. 1520, §§ 1-4; Ga. L. 1978, p. 1437, §§ 1-5; Ga. L. 1982, p. 3, § 50; Ga. L. 1984, p. 1219, § 1; Ga. L. 1990, p. 1274, § 1; Ga. L. 1993, p. 1817, § 2; Ga. L. 1994, p. 97, § 50; Ga. L. 1994, p. 503, § 1; Ga. L. 1997, p. 1521, § 1; Ga. L. 2000, p. 549, § 4; Ga. L. 2000, p. 1619, § 2; Ga. L. 2002, p. 1386, § 16; Ga. L. 2004, p. 711, § 3; Ga. L. 2008, p. 7, § 1/SB 352; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 303, §§ 4, 15/HB 117; Ga. L. 2009, p. 453, §§ 1-4, 1-10/HB 228; Ga. L. 2011, p. 705, §§ 3-3, 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, in the first sentence of subsection (h), substituted “Department of Public Health” for “Department of Community Health” and substituted “Code Section 31-2A-11” for “Code Section 31-2-12”.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

50-13-4.1. Agency reporting on required regulation.

Each agency shall prepare annually a report that specifies with detail those federal government mandates that require agency promulgation of rules and regulations rather than enactment of law by the General

Assembly. Such report shall also identify state and federal regulatory duplication. A copy of such report shall be submitted to the Governor, Secretary of State, President of the Senate, Speaker of the House of Representatives, Secretary of the Senate, Clerk of the House of Representatives, and legislative counsel. (Code 1981, § 50-13-4.1, enacted by Ga. L. 2012, p. 636, § 1/SB 428.)

Effective date. — This Code section became effective July 1, 2012.

50-13-8. Judicial notice of rules.

JUDICIAL DECISIONS

Limits on judicial notice.

Defendant was improperly convicted of violating Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. *DeLong v. State*, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

Denial of judicial notice motion proper.

— Trial court did not err in denying the buyers' motion asking the court to take judicial notice of Rule 110-11-1-.11 of the Georgia Department of Community Affairs (DCA), which related to the applicable building code for one- and two-family dwellings, because the trial court correctly found that the DCA exceeded its authority in adopting the International Residential Code for One and Two Family Dwellings (IRC) as a later edition of the Council of American Building Officials One- and Two-Family Dwelling Code (CABO); by its own terms, the IRC was not a subsequent or new edition of the CABO but an entirely new code based upon a study of a number of existing building codes. *Lumsden v. Williams*, 307 Ga. App. 163, 704 S.E.2d 458 (2010).

50-13-12. (Repealed effective January 1, 2013) Department of Revenue to hold hearing when demanded by aggrieved taxpayer; election of remedies.

Reserved. Repealed by Ga. L. 2012, p. 318, § 12/HB 100, effective January 1, 2013.

Editor's notes. — Ga. L. 2012, p. 318, § 12/HB 100 provides for the repeal of this Code section effective January 1, 2013. For provisions of this Code section effective until that date, see the bound volume. This Code section was based on Ga. L. 1964, p. 338, § 13; Ga. L. 1965, p. 283, § 12.

Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

RESEARCH REFERENCES

ALR. — What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

50-13-13. (For effective date, see note.) Opportunity for hearing in contested cases; notice; counsel; subpoenas; record; enforcement powers; revenue cases.

(a) In addition to any other requirements imposed by common law, constitution, statutes, or regulations:

(1) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice served personally or by mail;

(2) The notice shall include:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular section of the statutes and rules involved;

(D) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time, the notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished; and

(E) A statement as to the right of any party to subpoena witnesses and documentary evidence through the agency;

(3) Opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved;

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;

(5) Unless specifically precluded by statute, in addition to the agency, any contested case may be held before any agency representative who has been selected and appointed by the agency for such purpose. Before appointing a hearing representative, the agency shall determine that the person under consideration is qualified by reason of training, experience, and competence;

(6) The agency, the hearing officer, or any representative of the agency authorized to hold a hearing shall have authority to do the

following: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the agency or the hearing officer;

(7) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the contested case is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The costs of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court;

(8) A record shall be kept in each contested case and shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) A summary of the oral testimony plus all other evidence received or considered except that oral proceedings or any part thereof shall be transcribed or recorded upon request of any party. Upon written request therefor, a transcript of the oral proceeding or any part thereof shall be furnished to any party of the proceeding. The agency shall set a uniform fee for such service;

(C) A statement of matters officially noticed;

(D) Questions and offers of proof and rulings thereon;

(E) Proposed findings and exceptions;

(F) Any decision (including any initial, recommended, or tentative decision), opinion, or report by the officer presiding at the hearing; and

(G) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case; and

(9) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(b) In proceedings before the agency, the hearing officer, or any representative of the agency authorized to hold a hearing, if any party or an agent or employee of a party disobeys or resists any lawful order of process; or neglects to produce, after having been ordered to do so,

any pertinent book, paper, or document; or refuses to appear after having been subpoenaed; or, upon appearing, refuses to take the oath or affirmation as a witness; or after taking the oath or affirmation, refuses to testify, the agency, hearing officer, or other representative shall have the same rights and powers given the court under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If any person or party refuses as specified in this subsection, the agency, hearing officer, or other representative may certify the facts to the superior court of the county where the offense is committed for appropriate action, including a finding of contempt. The agency, hearing officer, or other representative shall have the power to issue writs of fieri facias in order to collect fines imposed for violation of a lawful order of the agency, hearing officer, or other representative.

(c) (For effective date, see note.) Subsection (a) of this Code section and the other provisions of this chapter concerning contested cases shall not apply to any case arising in the administration of the revenue laws, which case is subject to a subsequent de novo trial of the law and the facts in the superior court or in the Georgia Tax Tribunal in accordance with Chapter 13A of this title. (Ga. L. 1964, p. 338, § 14; Ga. L. 1965, p. 283, § 13; Ga. L. 1982, p. 3, § 50; Ga. L. 1994, p. 1270, § 9; Ga. L. 2012, p. 318, § 13/HB 100.)

Delayed effective date. — Subsection (c), as set out above, becomes effective January 1, 2013. For version of subsection (c) in effect until January 1, 2013, see the 2012 amendment note.

The 2012 amendment, effective January 1, 2013, in subsection (c), substituted "Subsection (a)" for "Except in cases in which a hearing has been demanded under Code Section 50-13-12, subsection (a)" at the beginning and added "or in the

Georgia Tax Tribunal in accordance with Chapter 13A of this title" at the end.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

JUDICIAL DECISIONS

Landowners not entitled to a hearing regarding neighbors' planned dock. — Landowners' claims against the state for declaratory judgment, mandamus, an unconstitutional taking, and due process and equal protection violations, all arising out of the issuance of a license to their neighbors to build a private dock in a coastal marshland area, all failed.

The Coastal Marshlands Protection Act did not apply to a private dock, pursuant to O.C.G.A. § 12-5-295(7); therefore, the landowners were not entitled to a hearing under the Act pursuant to O.C.G.A. § 12-5-283(b) and the Administrative Procedure Act. *Hitch v. Vasarhelyi*, 302 Ga. App. 381, 691 S.E.2d 286 (2010).

50-13-19. Judicial review of contested cases.

Law reviews. — For annual survey on administrative law, see 60 Mercer L. Rev.

1 (2008). For annual survey on administrative law, see 61 Mercer L. Rev. 1 (2009).

For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

PREREQUISITES TO JUDICIAL REVIEW

SCOPE OF JUDICIAL REVIEW

SUFFICIENCY OF EVIDENCE

General Consideration

Injunction not appropriate method for challenging agency order. — Trial court properly denied injunctive relief against a power company because an injunction was no longer an appropriate method for challenging an agency order after the passage of the Administrative Procedure Act, which provides a statutory right of review pursuant to O.C.G.A. § 50-13-19. *Fulton County Taxpayers Found., Inc. v. Ga. PSC*, 287 Ga. 876, 700 S.E.2d 554 (2010).

Superior court failed to address basis for agency's conclusions. — Judgment reversing a decision of the Georgia Department of Transportation overruling an administrative law judge's finding that one owner had a valid multiple message permit for its sign and that a second owner's application for a permit was properly denied was remanded because the superior court ignored the basis for the GDOT's conclusion and reviewed the ALJ's decision instead, and the findings and conclusions of the Deputy Commissioner of the GDOT pertaining to governmental restrictions on commercial speech did not properly address and resolve the issues; in its final agency decision, the Deputy Commissioner essentially side-stepped the issues the ALJ addressed and resolved and did not directly address the issue of whether, applying the applicable provisions and regulations, the first owner failed to make the necessary revisions to its sign, and the GDOT's conclusion that allowing the first owner to keep its permit would be unduly restrictive was arbitrary and capricious. *Lamar Co., LLC v. Whiteway Neon-Ad*, 303 Ga. App. 495, 693 S.E.2d 848 (2010).

Revocation of teacher's certificate. — Superior court exceeded the court's

authority in overturning the Professional Standards Commission's (PSC) decision to revoke a teacher's teaching certificate because the PSC's decision had a rational basis since the record contained evidence of an adverse consequence to a female student as well as evidence about the teacher's lack of leadership and unprofessional behavior; the PSC specifically adopted an administrative law judge's findings of fact and conclusions of law based on the full record, and the superior court was bound to uphold the PSC's judgment because the record contained evidence supporting the sanction. *Prof'l Stds. Comm'n v. Adams*, 306 Ga. App. 343, 702 S.E.2d 675 (2010).

Prerequisites to Judicial Review

Exhaustion of remedies necessary for judicial review.

That the Administrative Procedure Act, O.C.G.A. § 50-13-19(a), refers to a "person" does not negate the Act's requirement that all administrative remedies be exhausted; in order to exhaust administrative remedies before the Georgia Public Service Commission, a person must file a timely application for leave to intervene and participate in the certification proceedings. *Fulton County Taxpayers Found., Inc. v. Ga. PSC*, 287 Ga. 876, 700 S.E.2d 554 (2010).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health and the department's Commissioner from requiring the society's members to respond to certain disputed requests in an annual

survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner's position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. *Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs.*, 290 Ga. 628, 724 S.E.2d 386 (2012).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health (DCH) and the department's Commissioner from requiring the society's members to respond to certain disputed requests in an annual survey because the "acting outside statutory authority" exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting wholly outside DCH's jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being conducted did not fully comply with the procedural requirements of the statute. *Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs.*, 290 Ga. 628, 724 S.E.2d 386 (2012).

Lack of standing to seek judicial review. — Trial court properly concluded that taxpayers lacked standing to seek judicial review of the Georgia Public Service Commission's (PSC) certification order because the taxpayers did not file a timely application to intervene in the certification proceedings and, thus, did not satisfy the first requirement of the Administrative Procedure Act, O.C.G.A. § 50-13-19(a); the taxpayers had an available administrative remedy by applying for intervention status in the proceedings conducted by the PSC on the company's application for certification within 30 days following the first published notice of the proceeding, O.C.G.A. § 46-2-59(c), but the taxpayers did not seek to intervene until eight months after notice of the proceedings were first published by the PSC. *Fulton County Taxpayers Found., Inc. v. Ga. PSC*, 287 Ga. 876, 700 S.E.2d 554 (2010).

Scope of Judicial Review

Review limited to record.

By the statute's express provisions, an appeal from the denial of a request to expunge a criminal record under O.C.G.A. § 35-3-37(d)(6) is as provided in O.C.G.A. § 50-13-19. In such case, the review shall be conducted by the court without a jury and shall be confined to the record; the court, upon request, shall hear oral argument and receive written briefs. *Grimes v. Catoosa County Sheriff's Office*, 307 Ga. App. 481, 705 S.E.2d 670 (2010).

Standard of review.

Record contained no showing that the trial court applied an incorrect standard to any legal conclusions made by the Georgia Public Service Commission because both at the hearing and in the court's order, the trial court correctly framed the issue and explicitly considered the issue at length; because there was no evidence in the record affirmatively showing that the trial court applied the wrong standard of review, the court of appeals would not presume error. *MXenergy Inc. v. Ga. PSC*, 310 Ga. App. 630, 714 S.E.2d 132 (2011).

Judicial review of air quality permit. — Trial court decision invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to a power company to construct a pulverized coal-fired electric power plant in a particular county contained an erroneous ruling that the permit was invalid because the permit failed to include a limit on the power plant's carbon dioxide gas (CO₂) emissions since no provisions of the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., or the state implementation plan controlled or limited CO₂ emissions. Because CO₂ was not a pollutant that "otherwise is subject to regulation under the CAA," CO₂ was not a regulated new source review pollutant in the Prevention of Significant Deterioration (PSD) program and was not required to be controlled by use of best available control technology (BACT), therefore, the trial court erred by ruling that the PSD permit was required to include a BACT emission limit to control the power company's CO₂

emissions. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009), cert. denied, No. S09C1879, 2009 Ga. LEXIS 809 (Ga. 2009).

Sufficiency of Evidence

“Any evidence” test.

Rather than applying the “any evidence” standard of review, a trial court improperly made an independent determination that a university registrar’s termination was “arbitrary and capricious and was not the meaningful hearing that due process requires.” Under the “any evidence” standard, the trial court was not

allowed to substitute the court’s judgment for that of the administrative law judge. The administrative law judge properly upheld a university registrar’s termination since the evidence showed that the registrar’s office was in chaos; that students, alumni, parents, and faculty complained about the office; that registrar staff employees complained about the registrar; that the registrar did not know how to use the student information management system on the computer; and that the registrar had not done an adequate job of staff development. Bd. of Regents of the Univ. Sys. of Ga. v. Hogan, 298 Ga. App. 454, 680 S.E.2d 518 (2009).

50-13-20. Review of final judgment.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Remand order is not appealable final judgment.

Georgia Court of Appeals did not have jurisdiction over an appeal from a decision of a superior court remanding a case involving a challenge to a permit to build a community dock issued under the Coastal Marshlands Protection Act, O.C.G.A. § 12-5-286(a), to an administrative law judge for further consideration. The order

was not final as required under O.C.G.A. § 50-13-20. Coastal Marshlands Prot. Comm. v. Altamaha Riverkeeper, Inc., 304 Ga. App. 1, 695 S.E.2d 273, cert. denied, No. S10C1494, 2010 Ga. LEXIS 745 (Ga. 2010).

Cited in Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009).

ARTICLE 2

OFFICE OF STATE ADMINISTRATIVE HEARINGS

50-13-40. Office created; chief state administrative law judge.

(a) There is created within the executive branch of state government the Office of State Administrative Hearings. The office shall be independent of state administrative agencies and shall be responsible for impartial administration of administrative hearings in accordance with this article. The office shall be assigned for administrative purposes only, as that term is defined in Code Section 50-4-3, to the Department of Administrative Services.

(b) The head of the office shall be the chief state administrative law judge who shall be appointed by the Governor, shall serve a term of six

years, shall be eligible for reappointment, and may be removed by the Governor for cause. The chief state administrative law judge shall have been admitted to the practice of law in this state for a period of at least five years. The chief state administrative law judge shall be in the unclassified service as defined by Code Section 45-20-2 and shall receive a salary to be determined by the Governor. All successors shall be appointed in the same manner as the original appointment and vacancies in office shall be filled in the same manner for the remainder of the unexpired term.

(c) The chief state administrative law judge shall promulgate rules and regulations and establish procedures to carry out the provisions of this article.

(d) The chief state administrative law judge shall have the power to employ clerical personnel and court reporters necessary to assist in the performance of his or her duties.

(e)(1) The chief state administrative law judge shall have the power to employ full-time assistant administrative law judges who shall exercise the powers conferred upon the chief state administrative law judge in all administrative cases assigned to them. Each assistant administrative law judge shall have been admitted to the practice of law in this state for a period of at least three years. The chief state administrative law judge may establish different levels of administrative law judge positions and the compensation for such positions shall be determined by the chief state administrative law judge.

(2) The chief state administrative law judge may appoint a special assistant administrative law judge on a temporary or case basis as may be necessary for the proper performance of the duties of the office, pursuant to a fee schedule established in advance by the chief state administrative law judge. A special assistant administrative law judge shall have the same qualifications and authority as a full-time assistant administrative law judge.

(3) The chief state administrative law judge may designate in writing a qualified full-time employee of an agency other than an agency directly connected with the proceeding to conduct a specified hearing, but such appointment shall only be with the prior consent of the employee's agency. Such employee shall then serve as a special designated assistant administrative law judge for the purposes of the specific hearing and shall not be entitled to any additional pay for this service.

(4) When the character of the hearing requires utilization of a hearing officer with special skill and technical expertise in the field, the chief state administrative law judge may so certify in writing and appoint as a special lay assistant administrative law judge a person

who is not a member of the bar of this state or otherwise not qualified under this Code section. Such appointment shall specify in writing the reasons such special skill is required and the qualifications of the appointed individual.

(5) The chief state administrative law judge may designate a class of hearings for which individuals with the necessary skill and training need not meet the qualifications of paragraphs (1) through (4) of this subsection. These full-time associate administrative law judges shall exercise the powers conferred upon the chief state administrative judge in the class of administrative cases assigned to them. The chief state administrative law judge shall determine the compensation for such positions.

(f) The chief state administrative law judge and any administrative law judge employed on a full-time basis: (1) shall not otherwise engage in the practice of law; and (2) shall not, except in the performance of his or her duties in a contested case, render legal advice or assistance to any state board, bureau, commission, department, agency, or officer. (Code 1981, § 50-13-40, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-106/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in the third sentence of subsection (b).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

JUDICIAL DECISIONS

Cited in Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009).

50-13-41. Hearing procedures; powers of administrative law judge; issuance of decision; review.

JUDICIAL DECISIONS

Revocation of teacher’s certificate. — Superior court exceeded the court’s authority in overturning the Professional Standards Commission’s (PSC) decision to revoke a teacher’s teaching certificate because the PSC’s decision had a rational

basis since the record contained evidence of an adverse consequence to a female student as well as evidence about the teacher’s lack of leadership and unprofessional behavior; the PSC specifically adopted an administrative law judge’s find-

ings of fact and conclusions of law based on the full record, and the superior court was bound to uphold the PSC's judgment because the record contained evidence supporting the sanction. *Prof'l Stds. Comm'n v. Adams*, 306 Ga. App. 343, 702 S.E.2d 675 (2010).

Permit improperly reversed. — Trial court reviewing an administrative law judge's (ALJ) decision affirming the issuance of a permit to build a dock over marshlands, under the Coastal Marshlands Protection Act of 1970, O.C.G.A.

§ 12-5-280 et seq., by the Coastal Marshlands Protection Committee (Committee) erroneously reversed the decision because the court focused on the Committee's decision, instead of deciding whether the ALJ correctly affirmed the Committee's decision, since the ALJ conducted a de novo review of the Committee's decision at which new evidence could be received. *Coastal Marshlands Prot. Comm. v. Altamaha Riverkeeper, Inc.*, No. A11A1844; No. A11A1845, 2012 Ga. App. LEXIS 310 (Mar. 21, 2012).

50-13-42. (For effective date, see note.) Applicability of article.

(a) In addition to those agencies expressly exempted from the operation of this chapter under paragraph (1) of Code Section 50-13-2, this article shall not apply to the Commissioner of Agriculture, the Public Service Commission, the Certificate of Need Appeal Panel, or the Department of Community Health, unless specifically provided otherwise for certain programs or in relation to specific laws, or to the Department of Labor with respect to unemployment insurance benefit hearings conducted under the authority of Chapter 8 of Title 34. Such exclusion does not prohibit such office or agencies from contracting with the Office of State Administrative Hearings on a case-by-case basis.

(b) This article shall apply to hearings conducted pursuant to Code Sections 45-20-8 and 45-20-9. The State Personnel Board may provide by rule that proposed decisions in all or in specified classes of cases before the Office of State Administrative Hearings will become final without further action by the board and without expiration of the 30 day review period otherwise provided for in subsection (e) of Code Section 50-13-41.

(c) (For effective date, see note.) This article shall not apply with respect to any matter as to which an aggrieved party is permitted to file a petition with the Georgia Tax Tribunal in accordance with Chapter 13A of this title. (Code 1981, § 50-13-42, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1997, p. 844, § 5; Ga. L. 1999, p. 296, § 22; Ga. L. 2004, p. 598, § 3; Ga. L. 2009, p. 453, § 1-57/HB 228; Ga. L. 2012, p. 318, § 14/HB 100.)

Delayed effective date. — Subsection (c), as set out above, becomes effective January 1, 2013. Until January 1, 2013, there is no subsection (c).

The 2012 amendment, effective January 1, 2013, added subsection (c).

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall

continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case.”

50-13-44. Administrative transfer of individuals to Office of State Administrative Hearings; approval of chief state administrative law judge; funding of transferred positions; transferred employees status.

(a) Any full-time hearing officer or equivalent position, used exclusively or principally to conduct or preside over hearings for a covered agency immediately prior to July 1, 1994, shall be administratively transferred to the Office of State Administrative Hearings, if such employee qualifies under Code Section 50-13-40. Any person serving immediately prior to July 1, 1994, as an independent hearing officer or equivalent under contract or written order of appointment shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1994, and shall continue as a special assistant administrative law judge. All full-time staff of covered agencies who have exclusively or principally served as support staff for administrative hearings shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1994. All equipment or other tangible property in possession of covered agencies which is used or held exclusively or principally by personnel transferred under this Code section shall be transferred to the Office of State Administrative Hearings as of July 1, 1994.

(b) All such transfers shall be subject to the approval of the chief state administrative law judge and such personnel or property shall not be transferred if the chief state administrative law judge determines that the hearing officer, staff, equipment, or property should remain with the transferring agency.

(c) Funding for functions and positions transferred to the Office of State Administrative Hearings under this article shall be transferred as provided for in Code Section 45-12-90. The employees of the Office of State Administrative Hearings shall be in the unclassified service unless they are in the classified service as such term is defined by Code Section 45-20-2.

(d) The chief state administrative law judge shall assess agencies the cost of services rendered to them in the conduct of hearings.

(e)(1) Any full-time hearing officer of the State Personnel Board used exclusively or principally to conduct or preside over hearings for such board immediately prior to July 1, 1997, shall be administratively transferred to the Office of State Administrative Hearings if such employee qualifies under Code Section 50-13-40. Any person serving

immediately prior to July 1, 1997, as an independent hearing officer under contract or written order of appointment shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1997, and shall continue as a special assistant administrative law judge. All full-time staff of the State Personnel Board who have exclusively or principally served as support staff for administrative hearings conducted by such hearing officers shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1997. All equipment or other tangible property in possession of the State Personnel Board which is used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the Office of State Administrative Hearings as of July 1, 1997.

(2) Funding for functions and positions transferred to the Office of State Administrative Hearings under this subsection shall be transferred as provided for in Code Section 45-12-90. (Code 1981, § 50-13-44, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1997, p. 844, § 6; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-107/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (c), substituted the present provisions of the second sentence for the former provisions, which read: "The employees of the Office of State Administrative Hearings shall be in the classified service of the State Personnel Administration; provided, however, that the chief administrative law judge may place positions in the unclassified service as authorized in Article 1 of Chapter 20 of Title 45 and may also place an additional ten assistant administrative law judges in the unclassified service."

Editor's notes. — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

CHAPTER 13A

TAX TRIBUNALS

Sec.		Sec.	
50-13A-1.	Short title.	50-13A-6.	Qualification and terms of tribunal judges; oath; role.
50-13A-2.	Role of agency.	50-13A-7.	Location of office; conduct of hearings at other locations.
50-13A-3.	Application of definitions within Code Section 48-1-2; "tribunal" defined.	50-13A-8.	Support personnel for tribunal.
50-13A-4.	Creation of tax tribunal; seal.	50-13A-9.	Petitions for relief; jurisdiction; bonds.
50-13A-5.	Composition of tribunal; vacancies and other administrative matters.	50-13A-10.	Commencement of actions;

Sec.

- service; pleadings and proceedings.
- 50-13A-11. Petition operates as a stay; lifting of stay.
- 50-13A-12. Fees.
- 50-13A-13. Application of Georgia Civil Practice Act; discovery; attendance of witnesses.
- 50-13A-14. Conduct of trials; evidence; recordings.
- 50-13A-15. Writing required for judgments and orders; confidential

Sec.

- ality; application of stare decisis; publication.
- 50-13A-16. Small claims division established; jurisdiction; representation; hearings; finality of decisions.
- 50-13A-17. Procedure and designation of appealing courts.
- 50-13A-18. Service; filing.
- 50-13A-19. Rules of practice, procedure, and forms.
- 50-13A-20. Applicability of provisions.

Effective date. — This chapter became effective July 1, 2012.

Editor's notes. — Ga. L. 2012, p. 318, § 16/HB 100, not codified by the General

Assembly, provides, in part, that this chapter shall be applicable to all proceedings commenced on or after January 1, 2013.

50-13A-1. Short title.

This chapter shall be known and may be cited as the “Georgia Tax Tribunal Act of 2012.” (Code 1981, § 50-13A-1, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-2. Role of agency.

The General Assembly finds that there is a need for an independent specialized agency separate and apart from the Department of Revenue to resolve disputes between the department and taxpayers in an efficient and cost-effective manner. Such an agency would:

- (1) Improve the utilization of judicial resources by resolving tax cases in a more streamlined and efficient manner;
- (2) Increase the uniformity of decision making in tax cases;
- (3) Improve the equal access of all parties to court process; and
- (4) Increase public confidence in the fairness of the state tax system. (Code 1981, § 50-13A-2, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-3. Application of definitions within Code Section 48-1-2; “tribunal” defined.

Except where the context may otherwise clearly require, all terms used in this chapter shall have the meaning given such term by Code Section 48-1-2. As used in this chapter, the term “tribunal” means the

Georgia Tax Tribunal established by Code Section 50-13A-4 which shall be an independent and autonomous division within the Office of State Administrative Hearings operating under the sole direction of the chief tribunal judge. (Code 1981, § 50-13A-3, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-4. Creation of tax tribunal; seal.

(a) There is created within the executive branch of government the Georgia Tax Tribunal. The tribunal shall be assigned for administrative purposes only, as provided in Code Section 50-4-3, to the Department of Administrative Services and shall be funded through appropriations by the General Assembly to the Department of Administrative Services.

(b) The tribunal shall have a seal engraved with the words "Georgia Tax Tribunal." The tribunal shall authenticate all of its orders, records, and proceedings with the seal, and the courts of this state shall take judicial notice of the seal. (Code 1981, § 50-13A-4, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-5. Composition of tribunal; vacancies and other administrative matters.

(a) The tribunal shall consist of at least one full-time administrative law judge. If the tribunal has more than one judge, each shall exercise the powers of the tribunal in all matters, causes, or proceedings assigned to him or her.

(b) Initial tribunal judges shall be appointed by the Governor. If, initially, the tribunal has only one judge, that individual shall be appointed for a term of four years and shall be the chief tribunal judge; provided, however, that if, initially, the tribunal has more than one judge, then one judge shall be appointed for an initial term of four years and one judge shall be appointed as chief tribunal judge for an initial term of six years to ensure that the judges' initial terms do not expire in the same year. Once appointed, each initial tribunal judge shall continue in office until his or her term expires and a successor has been appointed and confirmed. Initial tribunal judges may be reappointed for successive terms, provided that each successive term shall be for four years.

(c) After initial appointments are made pursuant to subsection (b) of this Code section, all appointments and reappointments of the chief tribunal judge and other tribunal judges shall be made by the Governor, with the consent of the Senate, for terms of four years. Once appointed and confirmed, each such tribunal judge shall continue in office until his or her term expires and a successor has been appointed and confirmed. A tribunal judge may be reappointed for successive terms.

(d) Each tribunal judge shall receive an annual salary no less than that of the chief administrative law judge of the Office of State Administrative Hearings; provided, however, that the tribunal judge's total salary shall not be reduced during such judge's term of appointment.

(e) A vacancy in the tribunal occurring other than by expiration of term shall be filled for the unexpired term in the same manner as an original appointment.

(f) The executive of the tribunal shall be the chief tribunal judge who shall have sole charge of the administration of the tribunal, including, but not limited to, the preparation of a budget and matters involving employment and expenditures as set forth in Code Section 50-13A-8, and shall apportion among the judges all causes, matters, and proceedings coming before the tribunal.

(g) With the consent of the Senate, the Governor may remove a tribunal judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or other good cause.

(h) Whenever the tribunal trial docket or business becomes congested or any tribunal judge is absent, is disqualified, or for any other reason is unable to perform his or her duties as tribunal judge, and it appears to the Governor that the services of an additional tribunal judge or judges should be provided, the Governor may, without obtaining the approval of the Senate, appoint a judge, or judges, pro tempore of the tribunal. Any person appointed judge pro tempore of the tribunal shall have the qualifications set forth in subsections (a) and (b) of Code Section 50-13A-6 and shall serve for a period not to exceed 12 months.

(i) A tribunal judge may disqualify himself or herself on his or her own motion in any matter and may be disqualified for any cause listed in Code Section 15-1-8. (Code 1981, § 50-13A-5, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-6. Qualification and terms of tribunal judges; oath; role.

(a) Each judge of the tribunal shall be a citizen of the United States and, during the period of service, a resident of this state. No person shall be appointed as a tribunal judge unless at the time of appointment the individual is an attorney licensed to practice in this state and has practiced primarily in the area of tax law for at least eight years.

(b) Before entering upon the duties of office, each tribunal judge shall take and subscribe to an oath or affirmation that he or she shall faithfully discharge the duties of the office, and such oath shall be filed in the office of the Secretary of State.

(c) Each tribunal judge shall devote his or her full time during business hours to the duties of the tribunal. A tribunal judge shall not engage in any other gainful employment or business that interferes with or is inconsistent with his or her duties as a judge and shall not hold another office or position of profit in a government of this state, any other state, or the United States.

(d) If a tribunal judge does not have a full docket of tax cases, the chief tribunal judge may, acting in his or her sole discretion, petition the chief administrative law judge of the Office of State Administrative Hearings to allow such tribunal judge to hear and resolve nontax cases pending before the Office of State Administrative Hearings. The chief tribunal judge, the chief administrative law judge of the Office of State Administrative Hearings, and the tribunal judge in question shall mutually agree upon the number and types of such cases, taking into account the particular judge's background and qualifications. (Code 1981, § 50-13A-6, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-7. Location of office; conduct of hearings at other locations.

(a) The tribunal's principal location shall be located in Fulton County, Georgia, and in a building that is separate and apart from any building in which the commissioner has an office.

(b) The tribunal may, but shall not be required to, conduct hearings at its principal location in Fulton County. The tribunal may also hold hearings at any place within this state, with a view toward securing to taxpayers a reasonable opportunity to appear before the tribunal with as little inconvenience and expense as practicable. When the tribunal holds hearings outside of its principal location, it shall do so in a place that is physically separate from facilities regularly occupied by the commissioner. (Code 1981, § 50-13A-7, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-8. Support personnel for tribunal.

(a) The chief tribunal judge shall appoint a clerk of the tribunal, a court reporter, and such other employees, including staff attorneys and clerical assistants, and make such other expenditures, including expenditures for library, publications, and equipment, as are reasonably necessary to permit the tribunal to execute its functions efficiently; provided, however, that the chief tribunal judge shall endeavor to utilize staff employed by the Office of State Administrative Hearings and shall consult with the chief state administrative law judge so as to best utilize staff positions to best serve both the tribunal and the Office of State Administrative Hearings.

(b) A tribunal court reporter shall be subject to the provisions of Code Sections 15-14-20 through 15-14-36 as if appointed by a judge of a superior court, except when such provisions are in conflict with this chapter.

(c) No employee of the tribunal shall act as attorney, representative, or accountant for others in a matter involving any tax imposed or levied by this state or county or municipality of this state.

(d) In addition to contracting the services of the tribunal court reporter, the chief tribunal judge may contract the reporting of tribunal proceedings and, in the contract, fix the terms and conditions under which transcripts shall be supplied by the contractor to the tribunal and to other persons and agencies. (Code 1981, § 50-13A-8, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-9. Petitions for relief; jurisdiction; bonds.

(a) On and after January 1, 2013, any person may petition the tribunal for relief as set forth in Code Sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, and 48-6-76 and subparagraph (d)(2)(C) of Code Section 48-7-31. The tribunal shall have jurisdiction over actions for declaratory judgment that fall within subsection (a) of Code Section 50-13-10 and involve a rule of the commissioner that is applicable to taxes administered by the commissioner under Title 48.

(b) The tribunal shall have concurrent jurisdiction with the superior courts over those matters set forth in subsection (a) of this Code section.

(c) The tribunal shall not have jurisdiction to hear any matter arising under Title 3 or Title 40.

(d) No person shall be required as a condition either to initiating or maintaining an action before the tribunal to provide a surety bond or other security for any amounts that may be in dispute in such action. Nothing contained in this chapter shall be construed to prohibit the commissioner from requiring a bond under those circumstances set forth in Code Section 48-2-51. (Code 1981, § 50-13A-9, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-10. Commencement of actions; service; pleadings and proceedings.

(a) Actions may be commenced before the tribunal on and after January 1, 2013. Actions before the tribunal shall be commenced by filing a petition with the tribunal, naming the commissioner as respondent in his or her official capacity, within the time periods prescribed by Code Section 48-2-18, 48-2-35, 48-2-59, 48-6-7, or 48-6-76 or subpara-

graph (d)(2)(C) of Code Section 48-7-31, as the case may be, or as otherwise provided by law. The petitioner shall serve a copy of the petition on the commissioner and the Attorney General and attach a certificate of service to the petition filed with the tribunal. In the case of a refund action pursuant to Code Section 48-6-7 or 48-6-76, the petition also shall be served on the clerk of the superior court or collecting officer who is made a party to the action. Service shall be accomplished by certified mail or statutory overnight delivery. The petition shall include a summary statement of facts and law upon which the petitioner relies in seeking the requested relief.

(b) The commissioner and any other respondents shall file a response to petitioner's statement of facts and law which constitutes his or her answer with the tribunal no later than 30 days after the service of the petition. The commissioner and any other respondents shall serve a copy of their response on the petitioner's representative or, if the petitioner is not represented, on the petitioner, and shall file a certificate of such service with the response. If in any case a response has not been filed within the time required by this subsection, the case shall automatically become in default unless the time for filing the response has been extended by agreement of the parties, for a period not to exceed 30 days, or by the judge of the tribunal. The default may be opened as a matter of right by the filing of a response within 15 days of the day of default and payment of costs. At any time before final judgment, the judge of the tribunal, in his or her discretion, may allow the default to be opened for providential cause that prevented the filing of the response or for excusable neglect or when the tribunal judge, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the tribunal judge.

(c) Pleadings and proceedings before the tribunal shall be subject to the amendment and supplementation provisions of Code Section 9-11-15.

(d) Code Section 50-13A-18 shall apply to service of pleadings and documents.

(e) As soon as reasonably practicable, the tribunal judge shall schedule a prehearing conference to address discovery, scheduling, and other matters.

(f) The tribunal judge may remand a matter in dispute to the commissioner for further consideration upon motion by all parties to the proceeding, for good cause shown on the motion of any party, or sua sponte when the tribunal judge reasonably determines that circumstances warrant. Any such remand shall not divest the tribunal of jurisdiction, and the tribunal judge's order shall provide that any party, upon appropriate advance notice to all other parties, shall be entitled to have such matter returned to the tribunal for resolution.

(g) Contested cases pending before the Office of State Administrative Hearings on and before December 31, 2012, and cases when the taxpayer made a written demand for a hearing pursuant to Code Section 50-13-12 before January 1, 2013, shall not be transferred to the tribunal. If, on and after January 1, 2013, a written petition for relief or a demand for hearing is filed with the commissioner or by the affected party directly with the Office of State Administrative Hearings in a matter falling within the tribunal's jurisdiction under subsection (a) of Code Section 50-13A-9, such matter shall be transferred to the tribunal, and the remaining provisions of this chapter shall be applicable. (Code 1981, § 50-13A-10, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-11. Petition operates as a stay; lifting of stay.

(a) Except as provided for in Code Section 48-2-51, involving jeopardy assessments, the filing of a petition with the tribunal shall operate as a stay of any enforcement or collection action by the commissioner with respect to any tax, penalty, interest, or any collection costs that are disputed in the petition until the tribunal decision is finalized, including appeals to the superior court pursuant to Code Section 50-13A-17 or to any appellate court.

(b) Upon petition by the commissioner, and for good cause shown, the tribunal judge may lift the stay provided for in subsection (a) of this Code section. (Code 1981, § 50-13A-11, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-12. Fees.

(a) Upon filing a petition, the petitioner shall pay to the clerk of the tribunal a fee as determined by the rules established by the tribunal.

(b) A similar fee shall be paid by other parties making an appearance in the proceeding, except that no fee shall be charged to a government body or government official appearing in a representative capacity.

(c) The chief tribunal judge may fix a fee, not in excess of the fees charged and collected by the clerks of the superior courts of this state, for compiling, or for preparing and compiling, a transcript of the record, or for copying any record, entry, or other paper and the compilation and certification thereof. (Code 1981, § 50-13A-12, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-13. Application of Georgia Civil Practice Act; discovery; attendance of witnesses.

(a) The provisions of Chapter 11 of Title 9, the "Georgia Civil Practice Act," governing discovery and depositions shall apply to proceedings

before the tribunal; provided, however, that the parties to a proceeding shall make every effort to conduct discovery by informal consultation or communication. Upon motion of a party, the frequency or extent of formal discovery methods may be limited by the tribunal if it determines that the discovery is unduly burdensome or expensive when taking into account the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(b) The chief tribunal judge shall, by rules and regulations or by order in a particular proceeding, prescribe the period during which any discovery shall be commenced and completed. After the period for completing discovery has expired, or earlier as the parties may agree, the parties to a proceeding shall stipulate all relevant and nonprivileged matters to the fullest extent to which complete or qualified agreement can be reached or fairly should be reached. Neither the existence nor the use of the discovery mechanisms authorized by this Code section shall excuse failure to comply with this provision.

(c)(1) A party shall disclose to other parties at a reasonable time prior to the hearing the identity of any person who may be called at trial to present expert testimony.

(2) Except as otherwise stipulated or directed by the tribunal judge, expert witness disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness if one has been prepared or will be offered at the hearing.

(d) A judge or the clerk of the tribunal, on the request of any party to the proceeding, shall issue subpoenas requiring the attendance of witnesses and giving of testimony and subpoenas requiring the production of evidence or things.

(e) Any employee of the tribunal designated in writing for such purpose by a tribunal judge, or by the chief tribunal judge if more than one judge has been appointed, may administer oaths.

(f) Any witness who is subpoenaed or whose deposition is taken shall receive the same fees and mileage as a witness in a superior court of this state.

(g) In proceedings before the tribunal, if any party or an agent or employee of a party disobeys or resists any lawful order of process; neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; refuses to appear after having been subpoenaed; upon appearing, refuses to take the oath or affirmation as a

witness; or, after taking the oath or affirmation, refuses to testify, the tribunal judge shall have the same rights and powers given any other court under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If any person or party refuses as specified in this subsection, the tribunal judge may certify the facts to the superior court of the county where the offense is committed for appropriate action, including a finding of contempt. (Code 1981, § 50-13A-13, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-14. Conduct of trials; evidence; recordings.

(a) Trials in proceedings before the tribunal shall be de novo and without a jury. Hearings shall be open to the public, but on motion of any party, if such party shows good cause to protect certain information from being disclosed to the public, the tribunal judge may issue a protective order or an order closing part or all of a hearing to the public.

(b) The tribunal shall take evidence, and the tribunal judges shall conduct hearings and issue final judgments and interlocutory orders.

(c) The tribunal judges shall apply the rules of evidence as applied in the trial of civil nonjury cases in the superior courts; provided, however, that for hearings conducted in the small claims division, the tribunal judge may, when necessary to ascertain facts not reasonably susceptible of proof under such rules, consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(d) Testimony before a tribunal judge shall be given only on oath or affirmation.

(e) The petition and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing, unless a party satisfies the tribunal judge that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer's petition to conform to the proof would confer jurisdiction on the tribunal over a matter that would not otherwise come within the tribunal's jurisdiction.

(f) Except for hearings conducted in the small claims division of the tribunal as provided in Code Section 50-13A-16, all hearings before the tribunal shall be recorded by means acceptable for use in courts of this state. (Code 1981, § 50-13A-14, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-15. Writing required for judgments and orders; confidentiality; application of stare decisis; publication.

(a) Except with regard to proceedings in the small claims division of the tribunal pursuant to Code Section 50-13A-16, the tribunal judge

shall render all final judgments and interlocutory orders in writing, as appropriate, including therein a concise statement of the facts found and the conclusions of law reached. The tribunal judge's final judgment or interlocutory order shall, subject to law, grant such relief, invoke such remedies, and issue such orders as the tribunal judge deems appropriate to carry out its final judgment or interlocutory order.

(b) The chief tribunal judge shall adopt rules and regulations to address confidentiality of taxpayer information and proceedings before the tribunal.

(c) The tribunal judges shall adhere to the principle of stare decisis. The tribunal judge's interpretation of a tax statute subject to contest in one case shall be followed by the tribunal in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by tribunal judges in subsequent cases involving similar facts, unless the tribunal judge's interpretation or application conflicts with that of an appellate court or the tribunal judge provides satisfactory reasons for departing from prior precedent.

(d) Except as to a final judgment of the small claims division, all other final judgments of the tribunal shall be indexed and published in such print or electronic form as the chief tribunal judge deems best adapted for public convenience. Such publications shall be made permanently available and constitute the official reports of the tribunal. (Code 1981, § 50-13A-15, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-16. Small claims division established; jurisdiction; representation; hearings; finality of decisions.

(a) There is hereby established a small claims division of the tribunal.

(b) Judges of the tribunal shall sit as the judges of the small claims division.

(c) Within 90 days of filing a petition pursuant to the Code Section 50-13A-9, a taxpayer may elect to have the small claims division have jurisdiction over any proceeding with respect to which the amount of tax and penalties in controversy, exclusive of interest, is less than a threshold amount determined by the rules of the tribunal. A taxpayer may not revoke such election to proceed in the small claims division after this 90 day period. For good cause, the tribunal judge may, on his or her own motion or on the motion of a party to the case, remove a case from the small claims division.

(d) In proceedings before the small claims division of the tribunal, accountants and other tax return preparers designated by the taxpayer shall be permitted to accompany and appear with the taxpayer in order

to provide factual information regarding positions taken on tax returns of the taxpayer. An accountant or tax return preparer accompanying and appearing with a taxpayer for this purpose shall not be deemed to be acting as an advocate of the taxpayer or representing the taxpayer before the tribunal.

(e) At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the small claims division by notifying the clerk of the tribunal in writing. Such dismissal shall be without prejudice.

(f) Hearings in the small claims division shall be conducted in a manner consistent with proceedings before magistrate courts, as specified in Article 3 of Chapter 10 of Title 15. The tribunal judge may receive such evidence as the judge deems appropriate for determination of the case. Testimony shall be given under oath or affirmation.

(g) A judgment of the small claims division shall be conclusive upon all parties and may not be appealed. A judgment of the small claims division shall not be considered or cited as precedent in any other case, hearing, or proceeding. (Code 1981, § 50-13A-16, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-17. Procedure and designation of appealing courts.

(a) As used in this Code section, the term “reviewing court” means the Superior Court of Fulton County.

(b) Any party may appeal a final judgment of the tribunal, except for judgments of the small claims division, to the reviewing court. Proceedings for judicial review shall be instituted by filing a petition with the reviewing court within 30 days after the service of the tribunal’s final judgment or, if a rehearing is requested, within 30 days after the decision thereon. Copies of the petition for judicial review shall be served upon the tribunal and all parties of record. The petition shall state the nature of the petitioner’s interest, the fact showing that the petitioner is aggrieved by the judgment, and the grounds as specified in subsection (g) of this Code section upon which the petitioner contends that the judgment should be reversed or modified. The petition for judicial review may be amended by leave of the reviewing court.

(c) Notwithstanding any provisions of law or tribunal rule with respect to motions for rehearing or reconsideration after a final tribunal judgment or interlocutory order, the filing of such a motion shall not be a prerequisite to the filing of any action for judicial review or relief; provided, however, that no objection to any order or judgment of the tribunal shall be considered by the reviewing court upon petition for review unless such objection has been heard by the tribunal.

(d) Within 30 days after the service of the petition for judicial review or within further time allowed by the reviewing court, the tribunal shall

transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the reviewing court for the additional costs. The reviewing court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing in the reviewing court, application is made to the reviewing court for leave to present additional evidence and it is shown to the satisfaction of the reviewing court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the tribunal, the reviewing court may order that the additional evidence be taken before the tribunal upon conditions determined by the reviewing court. A tribunal judge may modify his or her findings and judgment by reason of the additional evidence and shall file that evidence and any modifications, new findings, or judgments with the reviewing court.

(f) The hearing or a petition for judicial review shall be conducted by the reviewing court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the tribunal not shown in the record, proof thereon may be taken in the reviewing court. The reviewing court, upon request, shall hear oral argument and receive written briefs. The reviewing court shall affirm, reverse, or modify the tribunal's judgment or remand the case for further proceedings within 90 days of the filing of the last such written brief.

(g) The reviewing court shall not substitute its judgment for that of the tribunal's as to the weight of the evidence on questions of fact. The reviewing court may affirm the tribunal's judgment or remand the case for further proceedings. The reviewing court may reverse or modify the judgment if substantial rights of the petitioner have been prejudiced because the tribunal judge's findings, inferences, conclusions, or judgments are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the tribunal;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) An aggrieved party may seek a review of any final judgment of the reviewing court by the Court of Appeals or the Supreme Court, as

provided by law. (Code 1981, § 50-13A-17, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-18. Service; filing.

(a) An initial petition shall be served by certified mail or statutory overnight delivery and any other pleading, motion, response, statement, or document permitted or required to be served shall be served by first-class mail or hand delivery.

(b) Any pleading, motion, response, statement, or document required by law, rule, or regulation to be received by or filed with the tribunal pursuant to the requirements of this chapter shall be deemed to be received by or filed with the tribunal on the earlier of:

(1) The date such pleading, motion, response, statement, or document is actually received by the tribunal;

(2) The official postmark date such pleading, motion, response, statement, or document was mailed, properly addressed with postage prepaid, by registered or certified mail; or

(3) The date on which such pleading, motion, response, statement, or document was delivered to a commercial delivery company for statutory overnight delivery as provided in Code Section 9-10-12 as evidenced by the receipt provided by the commercial delivery company.

(c) Mailing or delivery to the address of the taxpayer given on the taxpayer's petition or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the commissioner, and, when applicable, of the clerk of superior court or collecting official who is made a party to the action shall constitute personal service on such party. The chief tribunal judge may by rule prescribe that notice by other means shall constitute personal service and may in a particular case order that notice be given to additional persons or order that notice be given by other means. (Code 1981, § 50-13A-18, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-19. Rules of practice, procedure, and forms.

The tribunal shall adopt rules of practice and procedure and adopt all reasonable rules and forms as may be necessary or appropriate to carry out the intent and purposes of this chapter. (Code 1981, § 50-13A-19, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

50-13A-20. Applicability of provisions.

(a) For purposes of the language contained in the Code sections referenced in subsection (b) of this Code section, the term "agency" shall include the tribunal.

(b) Only the following provisions of Article 1 of Chapter 13 of this title shall apply to the tribunal and its administration:

- (1) Code Section 50-13-3, except for paragraph (4) of subsection (a);
- (2) Code Section 50-13-4, except for paragraphs (3) and (4) of subsection (a) and subsections (b), (g), (h), and (i);
- (3) Code Section 50-13-6, except for paragraph (2) of subsection (c);
- (4) Code Section 50-13-7;
- (5) Code Section 50-13-8; and
- (6) Code Section 50-13-10. (Code 1981, § 50-13A-20, enacted by Ga. L. 2012, p. 318, § 15/HB 100.)

CHAPTER 14

OPEN AND PUBLIC MEETINGS

Sec.		Sec.	
50-14-1.	Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; telecommunications conferences.	50-14-3.	Excluded proceedings.
		50-14-4.	Procedure when meeting closed.
		50-14-6.	Penalty for violation; defense.

50-14-1. Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; telecommunications conferences.

- (a) As used in this chapter, the term:
- (1) “Agency” means:
 - (A) Every state department, agency, board, bureau, office, commission, public corporation, and authority;
 - (B) Every county, municipal corporation, school district, or other political subdivision of this state;
 - (C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;
 - (D) Every city, county, regional, or other authority established pursuant to the laws of this state; and
 - (E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as

defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Executive session" means a portion of a meeting lawfully closed to the public.

(3)(A) "Meeting" means:

(i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

(ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

(B) "Meeting" shall not include:

(i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

(ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;

(iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;

(iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or

gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

(v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term "meeting" shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

(b)(1) Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

(2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.

(d)(1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be

held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

(2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that, in counties where the legal organ is published less often than four times weekly, sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requestor.

(3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

(e)(1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the

two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

(2)(A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting.

(B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

(C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

(f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference, provided that any such meeting is conducted in compliance with this chapter.

(g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the

meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year. (Code 1981, § 50-14-1, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, §§ 1, 2; Ga. L. 1993, p. 784, § 1; Ga. L. 1999, p. 549, §§ 1, 2; Ga. L. 2012, p. 218, § 1/HB 397.)

The 2012 amendment, effective April 17, 2012, inserted "office," in subparagraphs (a)(1)(A) and (a)(1)(C); substituted "governing body of any agency as defined in this paragraph which constitutes" for "governing authority of any agency as defined in this paragraph and which allocation constitutes" near the middle in subparagraph (a)(1)(E); added paragraph (a)(2); redesignated former paragraph (a)(2) as present paragraph (a)(3); rewrote paragraph (a)(3); substituted the present provisions of subsection (b) for the former provisions, which read: "Except as otherwise provided by law, all meetings as defined in subsection (a) of this Code section shall be open to the public. Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not

open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision must be commenced within 90 days of the date such contested action was taken, provided that any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision."; in subsection (c), deleted ", sound, and visual" following "Visual" in the second sentence; rewrote subsections (d) and (e); in subsection (f), inserted "or committee of such an agency", and substituted "teleconference" for "telecommunications conference"; and added subsection (g).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION APPLICATION

General Consideration

Construction of Act.

In view of the General Assembly's intent, the correct reading of the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), and the one that is most natural and reasonable, is that, having first mandated that meeting minutes include a record of all votes, the subsection then sets forth alternative requirements for accurately recording individuals' votes in the case of both roll-call and non-roll-call votes; in the case of a non-roll-call vote, the minutes

must list the names of those voting against a proposal or abstaining, and if no such names are listed, the public may correctly presume that the vote was unanimous, but if such names are listed, a member of the public need only look at the list of voting officials in attendance at the meeting to determine who voted for a proposal. *Cardinale v. City of Atlanta*, 290 Ga. 521, 722 S.E.2d 732 (2012).

Application

Citizen lacked standing to initiate criminal prosecution. — Portion of a

citizen's complaint seeking to impose criminal liability on city council members for their violation of the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), was properly dismissed because the citizen lacked standing to initiate criminal prosecution; at most, only the Act, O.C.G.A. § 50-14-6, is subject to a strict construction. *Cardinale v. City of Atlanta*, 290 Ga. 521, 722 S.E.2d 732 (2012).

Conference of county commissioners and county attorney to discuss zoning ruling was not a meeting. —

Conference among county commissioners, the county zoning administrator, the county attorney, and a zoning applicant, held immediately following a superior court ruling invalidating a zoning decision, was not a "meeting" under O.C.G.A. § 50-14-1(a)(2) because it was not held pursuant to schedule, call, or notice at a designated time and place. Even if any business or policy was discussed at the conference, no official action was taken that could be voided under § 50-14-1(b). *Gumz v. Irvin*, 300 Ga. App. 426, 685 S.E.2d 392 (2009).

Claims for lack of notice untimely. — Because a citizens group's claims for lack of notice under the Georgia Open and Public Meetings Law, O.C.G.A. § 50-14-1(d), were untimely, and because the group failed to show that the actions by a county and a company in operating a landfill violated O.C.G.A. §§ 12-8-32 and 48-8-121(a)(1), the company was entitled to summary judgment in the group's action for damages and declaratory and injunctive relief. *Anti-Landfill Corp. v. North Am. Metal Co., LLC*, 299 Ga. App. 509, 683 S.E.2d 88 (2009).

Chairperson of county school board in contempt for interfering with agenda items. —

Evidence supported a trial court's conclusion that the chairperson of a county board of education deliberately prevented board members from appealing the chairperson's decisions at a board meeting and would not recognize any appeals of the chairperson's decisions to the other members of the board, and the trial court properly held the chairperson in contempt of the court's order requiring that all board members be entitled to place matters on the agenda consistent with O.C.G.A. § 50-14-1. *Cook v. Smith*, 288 Ga. 409, 705 S.E.2d 847 (2010).

Names of persons voting omitted from minutes of meeting. —

Court of appeals erred in affirming the dismissal of a citizen's action alleging that a city and city counsel members violated the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), because the complaint stated claims for declaratory and injunctive relief under the Act, O.C.G.A. § 50-14-5(a), based upon alleged violations of O.C.G.A. § 50-14-1(e)(2) since the minutes of a counsel meeting omitted the names of council members who voted, in the minority to amend certain council rules; the court of appeals erred in interpreting O.C.G.A. § 50-14-1(e)(2) to allow minutes of an agency meeting to omit the names of persons voting against a proposal or abstaining when the vote was not taken by roll-call and was not unanimous. *Cardinale v. City of Atlanta*, 290 Ga. 521, 722 S.E.2d 732 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Application to the Drug Utilization Review Board. — Open Meetings Act, O.C.G.A. § 50-14-1, applies to the Drug

Utilization Review Board created by the Georgia Department of Community Health. 2010 Op. Att'y Gen. No. U10-1.

50-14-2. Certain privileges not repealed.

Editor's notes. — Ga. L. 2012, p. 218, § 1, effective April 17, 2012, reenacted

this Code section without change. Refer to bound volume for text of this Code section.

50-14-3. Excluded proceedings.

(a) This chapter shall not apply to the following:

(1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;

(2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;

(3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state, including grand jury meetings;

(4) Adoptions and proceedings related thereto;

(5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;

(6) Meetings:

(A) Of any medical staff committee of a public hospital;

(B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter 7 of Title 31, or under any other applicable federal or state statute or regulation; and

(C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;

(7) Incidental conversation unrelated to the business of the agency; or

(8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.

(b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:

(1) Meetings when any agency is discussing or voting to:

(A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;

(B) Authorize negotiations to purchase, dispose of, or lease property;

(C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;

(D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or

(E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

(2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

(3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to invest-

ment securities trading or investment portfolio positions and composition; and

(4) Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed. (Code 1981, § 50-14-3, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, § 3; Ga. L. 1997, p. 44, § 2; Ga. L. 2003, p. 880, § 1; Ga. L. 2006, p. 560, § 4/SB 462; Ga. L. 2012, p. 218, § 1/HB 397.)

The 2012 amendment, effective April 17, 2012, rewrote this Code section.

JUDICIAL DECISIONS

Acquisition of real estate. — Trial court did not err in dismissing citizens' action alleging that a county board of commissioners violated the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 et seq., by voting in closed meetings to pursue the acquisition of land because the complaint failed to aver any violation of the Act;

because the exception to the open meetings requirement, O.C.G.A. § 50-14-3(4), does not specifically provide that a vote on the excepted issue must be taken in public, a vote can be taken in closed session. *Johnson v. Bd. of Comm'rs*, 302 Ga. App. 266, 690 S.E.2d 912 (2010).

50-14-4. Procedure when meeting closed.

(a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

(b)(1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

(2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session. (Code 1981, § 50-14-4, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1999, p. 549, § 3; Ga. L. 2012, p. 218, § 1/HB 397.)

The 2012 amendment, effective April 17, 2012, designated the existing provisions of subsection (b) as paragraph (b)(1), and, in paragraph (b)(1), deleted “chairperson or other” preceding “person presid-

ing” and inserted “or, if the agency’s policy so provides, each member of the governing body of the agency attending such meeting,”; and added paragraph (b)(2).

OPINIONS OF THE ATTORNEY GENERAL

Closure of meetings held by Drug Utilization Review Board. — Drug Utilization Review Board may close the Board’s meetings in accordance with the procedures outlined in O.C.G.A. § 50-14-4. That being said, it is up to the Department of Community Health to make the decision regarding whether to close any

Board meeting. The decision to close a meeting, however, must be made on a case-by-case basis and supported both by the facts of the particular situation and the affidavit of the presiding officer justifying the closure. 2010 Op. Att’y Gen. No. U10-1.

50-14-5. Jurisdiction to enforce chapter.

Editor’s notes. — Ga. L. 2012, p. 218, § 1, effective April 17, 2012, reenacted

this Code section without change. Refer to bound volume for text of this Code section.

JUDICIAL DECISIONS

Complaint stated claims for declaratory and injunctive relief under the act. — Court of appeals erred in affirming the dismissal of a citizen’s action alleging that a city and city counsel members violated the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), because the complaint stated claims for declaratory and injunctive relief under the Act, O.C.G.A. § 50-14-5(a), based upon alleged violations of O.C.G.A. § 50-14-1(e)(2) since the

minutes of a counsel meeting omitted the names of council members who voted, in the minority to amend certain council rules; the court of appeals erred in interpreting O.C.G.A. § 50-14-1(e)(2) to allow minutes of an agency meeting to omit the names of persons voting against a proposal or abstaining when the vote was not taken by roll-call and was not unanimous. *Cardinale v. City of Atlanta*, 290 Ga. 521, 722 S.E.2d 732 (2012).

50-14-6. Penalty for violation; defense.

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil

action brought pursuant to this chapter against any person who negligently violates the terms of this chapter in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. (Code 1981, § 50-14-6, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 2012, p. 218, § 1/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted “\$1,000.00” for “\$500.00” at the end of the first sentence and added the second through fourth sentences.

JUDICIAL DECISIONS

Citizen lacked standing to initiate criminal prosecution. — Portion of a citizen’s complaint seeking to impose criminal liability on city council members for the members’ violation of the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), was properly dismissed because the citizen lacked standing to initiate criminal prosecution; at most, only the Act, O.C.G.A. § 50-14-6, is subject to a strict construction. *Cardinale v. City of Atlanta*, 290 Ga. 521, 722 S.E.2d 732 (2012).

CHAPTER 16

PUBLIC PROPERTY

Article 1

General Provisions

- Sec.
- 50-16-3. Property of state boards and departments.
- 50-16-4. Use and keeper of capitol buildings and grounds.
- 50-16-6. Janitors and watchmen of public buildings and grounds to make arrests, prevent abuse, suppress disorderly conduct, and protect property [Repealed].
- 50-16-12. Authorization for state insurance and hazard reserve fund to retain certain moneys for the payment of liabilities and expenses; deposit of investment funds with Office of the State Treasurer.
- 50-16-14. Authorization of law enforcement officers and security per-

Sec.

sonnel to deny entrance and remove persons from state property; assistance.

50-16-18. Writing off small amounts due to state.

Article 2

State Properties Code

- 50-16-32. Creation, membership, and organization of State Properties Commission; transfer of assets, obligations, responsibilities, funds, personnel, equipment, and facilities from the Department of Administrative Services.
- 50-16-38. All state entities to acquire real property through commission; exceptions; procedure for handling acquisition requests; funds for acquisitions; donations; conveyance of title.

Sec.

50-16-42. Revocable license agreements without competitive bidding authorized; terms and condi-

tions; telephone lines construction provisions unaffected; exception.

ARTICLE 1

GENERAL PROVISIONS

50-16-3. Property of state boards and departments.

The state holds the legal title to or is the beneficial owner of:

(1) The several institutions operated by the Board of Regents of the University System of Georgia, including all real and personal property belonging to the several institutions or used in connection therewith, and all other property conveyed to the board for the use of any of the institutions or for educational purposes or conveyed to any of the boards of trustees of which the board of regents is the successor or to any of the institutions under its control;

(2) The several institutions operated by the Department of Human Services, the Department of Public Health, or the Department of Behavioral Health and Developmental Disabilities, including all real and personal property belonging to the several institutions or used in connection therewith, and all other property conveyed to any such department for the use of any of the institutions or conveyed to any of the boards of trustees of which such department is the successor or to any of the institutions under its control;

(3) The rights of way of the state highway system and all buildings, lands, quarries, equipment, and other property of the Department of Transportation; and

(4) All lands and other property conveyed to or held by the Department of Natural Resources and the State Forestry Commission, or their predecessors, for forestry or park purposes. (Orig. Code 1863, § 886; Code 1868, § 965; Code 1873, § 961; Code 1882, § 961; Civil Code 1895, § 1015; Civil Code 1910, § 1282; Ga. L. 1919, p. 242, § 1; Ga. L. 1931, p. 7, §§ 26-89; Code 1933, § 91-104; Ga. L. 2009, p. 453, § 1-58/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in paragraph (2).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

50-16-4. Use and keeper of capitol buildings and grounds.

The use of the capitol building and grounds shall be limited to departments of the state government and to state and national political organizations, and the keeper of public buildings and grounds shall not grant the use of either the capitol buildings or grounds for any other purposes, except that the Georgia Building Authority as keeper of public buildings and grounds is authorized to provide space in the capitol building for use as a vending stand, as described by Article 2 of Chapter 9 of Title 49, for the use of state officials and employees and their invited guests. (Ga. L. 1882-83, p. 18, §§ 1-16; Ga. L. 1884-85, p. 27, § 1; Ga. L. 1888, p. 14, §§ 1-3; Ga. L. 1892, p. 95, §§ 1, 2; Civil Code 1895, § 1017; Civil Code 1910, § 1284; Code 1933, § 91-105; Ga. L. 1961, p. 218, § 1; Ga. L. 2000, p. 1137, § 9; Ga. L. 2012, p. 303, § 8/HB 1146.)

The 2012 amendment, effective July 9 of Title 49” for “Article 2 of Chapter 15 of 1, 2012, substituted “Article 2 of Chapter Title 34” near the end of this Code section.

50-16-6. Janitors and watchmen of public buildings and grounds to make arrests, prevent abuse, suppress disorderly conduct, and protect property.

Reserved. Repealed by Ga. L. 2010, p. 137, § 4, effective July 1, 2010.

Editor’s notes. — This Code section Penal Code 1895, § 224; Penal Code 1910, was based on Ga. L. 1892, p. 100, § 3; § 221; Code 1933, § 91-107.

50-16-12. Authorization for state insurance and hazard reserve fund to retain certain moneys for the payment of liabilities and expenses; deposit of investment funds with Office of the State Treasurer.

In order to finance the continuing liability established with other agencies of state government, the state insurance and hazard reserve fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the state insurance and hazard reserve fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the state insurance and hazard reserve fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the state insurance and hazard reserve fund. When moneys are paid over to the Office of the State Treasurer, as

provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer. (Ga. L. 1972, p. 296, § 1; Ga. L. 2000, p. 1474, § 10; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” twice and substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” three times.

50-16-14. Authorization of law enforcement officers and security personnel to deny entrance and remove persons from state property; assistance.

Certified law enforcement officers of the Department of Public Safety and the Georgia Bureau of Investigation and security personnel employed by or under contract with the Department of Public Safety are authorized and empowered to deny the entrance of any person into or upon any property or building of the Georgia Building Authority or the state when the person’s activities are intended to disrupt or interfere with the normal activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. Certified officers of the Department of Public Safety and the Georgia Bureau of Investigation and security personnel employed by or under contract with the Department of Public Safety are authorized and empowered to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster, or similar device. Certified officers of the Department of Public Safety and the Georgia Bureau of Investigation and security personnel employed by or under contract with the Department of Public Safety are authorized and empowered to remove any person from any such property or building when the person’s activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to the property or building or the inhabitants thereof. The authority and power provided in this Code section and Code Section 50-16-15 shall also extend to any property or building utilized by the state or any agency thereof. Any law enforcement officer assisting the certified officers of the Department of Public Safety and the Georgia Bureau of Investigation or the security personnel employed by or under contract with the Department of Public Safety shall have the same authority and power as provided by this Code section and Code Section 50-16-15. (Ga. L. 1976, p. 471, § 1; Ga. L. 1978, p. 850, § 1; Ga. L. 2010, p. 137, § 5/HB 1074.)

The 2010 amendment, effective July 1, 2010, rewrote this Code section.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2010, a second occurrence of “the” was deleted preceding “certified officers” in the last sentence.

50-16-18. Writing off small amounts due to state.

(a) It is the intent of this Code section to implement the provisions of Article III, Section VI, Paragraph VI of the Constitution of the State of Georgia which generally prohibit gratuities by devising an administrative mechanism which will ensure that any obligation due the state is not pursued when it is manifest that the account is uncollectable or when the costs of pursuing a moderate indebtedness would create a greater obligation on the treasury than the amount claimed and that there will be an established procedure to scrutinize modest debts individually and, when collection appears to be unlikely, to make a formal administrative determination to conserve public moneys which would otherwise be expended for unfruitful collection efforts.

(b)(1) (Repealed effective July 1, 2013) All state agencies and departments, in order to preserve public funds, shall be authorized to develop appropriate standards that comply with the policies prescribed by the state accounting officer which will provide a mechanism to consider administratively discharging any obligation or charge in favor of such agency or department when such obligation or charge is \$100.00 or any lesser amount unless the agency or department belongs to the Board of Regents of the University System of Georgia or the Technical College System of Georgia in which case the obligation or charge in favor of the institution under the Board of Regents of the University System of Georgia or the institution of the Technical College System of Georgia may be \$3,000.00 or any lesser amount. This procedure shall not be available to such agency or department in those instances where the obligor has more than one such debt or obligation in any given fiscal year, and this provision shall be construed in favor of the state agency or department so as not to alter the unquestioned ability of such state agency or department to pursue any debt, obligation, or claim in any amount whatsoever. In those instances where a debt or obligation of \$100.00 or less, or \$3,000.00 or less for the institutions of the Board of Regents of the University System of Georgia or the Technical College System of Georgia, has been deemed to be uncollectable, the proper individual making such determination shall transmit a recapitulation of the efforts made to collect the debt together with all other appropriate information, which shall include a reasonable estimate of the cost to pursue administratively or judicially the account, together with a recommendation to the commissioner of such state agency or department. In those instances where the commissioner makes a determination that further collection efforts would be detrimental to the

public's financial interest, a certificate reflecting this determination shall be executed, and this certificate shall serve as the authority to remove such uncollectable accounts from the financial records of such state agency or department. Such certificates shall be forwarded to the state accounting officer in a manner and at such times as are reflected in the standards developed by the state accounting officer and the state agency or department. This paragraph shall stand repealed and reserved effective July 1, 2013.

(2) On and after July 1, 2013, all state agencies and departments, in order to preserve public funds, shall be authorized to develop appropriate standards that comply with the policies prescribed by the state accounting officer which will provide a mechanism to consider administratively discharging any obligation or charge in favor of such agency or department when such obligation or charge is \$100.00 or any lesser amount. This procedure shall not be available to such agency or department in those instances where the obligor has more than one such debt or obligation in any given fiscal year, and this provision shall be construed in favor of the state agency or department so as not to alter the unquestioned ability of such state agency or department to pursue any debt, obligation, or claim in any amount whatsoever. In those instances where a debt or obligation of \$100.00 or less has been deemed to be uncollectable, the proper individual making such determination shall transmit a recapitulation of the efforts made to collect the debt together with all other appropriate information, which shall include a reasonable estimate of the cost to pursue administratively or judicially the account, together with a recommendation to the commissioner of such state agency or department. In those instances where the commissioner makes a determination that further collection efforts would be detrimental to the public's financial interest, a certificate reflecting this determination shall be executed, and this certificate shall serve as the authority to remove such uncollectable accounts from the financial records of such state agency or department. Such certificates shall be forwarded to the state accounting officer in a manner and at such times as are reflected in the standards developed by the state accounting officer and the state agency or department. (Code 1981, § 50-16-18, enacted by Ga. L. 1986, p. 506, § 1; Ga. L. 2003, p. 313, § 4; Ga. L. 2004, p. 1078, § 1; Ga. L. 2005, p. 694, §§ 10, 11/HB 293; Ga. L. 2006, 686, § 1/HB 1294; Ga. L. 2008, p. 884, § 1-2/HB 1183; Ga. L. 2010, p. 576, § 1-1/HB 1128.)

The 2010 amendment, effective May 27, 2010, substituted "July 1, 2013" for "July 1, 2010" at the end of the last sen-

tence of paragraph (b)(1) and near the beginning of the first sentence of paragraph (b)(2).

ARTICLE 2

STATE PROPERTIES CODE

50-16-32. Creation, membership, and organization of State Properties Commission; transfer of assets, obligations, responsibilities, funds, personnel, equipment, and facilities from the Department of Administrative Services.

(a) There is created within the executive branch of state government a public body which shall be known as the State Properties Commission and which shall consist of seven members and be composed of the Governor; the Secretary of State; one citizen appointed by the Governor for terms ending on April 1 in each odd-numbered year; the state treasurer; the state accounting officer; one citizen appointed by the Speaker of the House of Representatives for terms ending on April 1 in each odd-numbered year; and one citizen appointed by the Lieutenant Governor for terms ending on April 1 in each odd-numbered year. The term of office of the appointed members of the commission is continued until their successors are duly appointed and qualified. The Lieutenant Governor may serve as an appointed citizen member.

(b) The Governor shall be the chairperson of the commission, the state accounting officer shall be its vice chairperson, and the Secretary of State shall be its secretary. Four members of the commission shall constitute a quorum. No vacancy on the commission shall impair the right of the quorum to exercise the powers and perform the duties of the commission. With the sole exception of acquisitions of real property, which acquisitions shall require four affirmative votes of the membership of the commission present and voting at any meeting, the business, powers, and duties of the commission may be transacted, exercised, and performed by a majority vote of the commission members present and voting at a meeting when more than a quorum is present and voting or by a majority vote of a quorum when only a quorum is present and voting at a meeting. An abstention in voting shall be considered as that member not being present and not voting in the matter on which the vote is taken. No person may be appointed, elected, or serve on the commission who is a member of the legislative or judicial branch of government. In the event any ex officio member is determined to be in either the legislative or judicial branch of government, the General Assembly declares that it would have passed this article without such ex officio position on the commission and would have reduced the quorum and vote required of the commission on all actions accordingly.

(c) Meetings shall be held on the call of the chairperson, vice chairperson, or two commission members whenever necessary to the

performance of the duties of the commission. Minutes or transcripts shall be kept of all meetings of the commission and in the minutes or transcripts there shall be kept a record of the vote of each commission member on all questions, acquisitions, transactions, and all other matters coming before the commission. The secretary shall give or cause to be given to each commission member, not less than three days prior to the meeting, written notice of the date, time, and place of each meeting of the commission.

(d) The commission shall adopt a seal for its use and may adopt bylaws for its internal government and procedures.

(e) Members of the commission who are also state officials shall receive only their traveling and other actual expenses incurred in the performance of their official duties as commission members. Citizen members shall receive the same expense allowance per day as that received by a member of the General Assembly for each day any such member of the commission is in attendance at a meeting or carrying out official duties of the commission inside or outside the state, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile inside or outside the state while attending meetings or carrying out their official duties as members of the commission.

(f) The commission shall receive all assets of and the commission shall be responsible for any contracts, leases, agreements, or other obligations of the Department of Administrative Services under the former provisions of Article 2 of Chapter 5 of this title, the "State Space Management Act of 1976." The commission is substituted as a party to any such contract, agreement, lease, or other obligation and the same responsibilities respecting such matters as if it had been the original party and is entitled to all prerogatives, benefits, and rights of enforcement by the commissioner of administrative services and Department of Administrative Services. Appropriations and other funds of the Department of Administrative Services encumbered, required, or held for functions transferred to the commission shall be transferred to the commission as provided for in Code Section 45-12-90, relating to disposition of appropriations for duties, purposes, and objects which have been transferred. Personnel, equipment, and facilities previously employed by the Department of Administrative Services for such transferred functions shall likewise be transferred to the commission. On April 12, 2005, all personnel positions authorized by the Department of Administrative Services in fiscal year 2006 for such functions shall be transferred to the commission, and all employees of the department whose positions are transferred by the Department of Administrative Services to the commission shall become employees of the commission in the unclassified service as defined by Code Section

45-20-6. (Code 1933, § 91-103A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 249, § 1; Ga. L. 1965, p. 663, § 2; Code 1933, § 91-104a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1977, p. 685, § 1; Ga. L. 1978, p. 1047, § 1; Ga. L. 1987, p. 347, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1995, p. 1066, § 1; Ga. L. 1999, p. 653, § 1; Ga. L. 2005, p. 100, § 9/SB 158; Ga. L. 2005, p. 694, § 12/HB 293; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and

Fiscal Services” in the middle of the first sentence of subsection (a).

50-16-38. All state entities to acquire real property through commission; exceptions; procedure for handling acquisition requests; funds for acquisitions; donations; conveyance of title.

(a) Except for:

(1) All acquisitions of real property by the Department of Transportation and the Board of Regents of the University System of Georgia;

(2) The Department of Natural Resources acquiring by gift parcels of real property, not exceeding three acres each, to be used for the construction and operation thereon of boat-launching ramps;

(3) Acquisitions of real property by the Technical College System of Georgia in connection with student live work projects funded through moneys generated as a result of the sale of such projects, donations, or student supply fees;

(4) Acquisitions of real property by the commission resulting from transfers of custody and control of real property to the commission by executive order of the Governor or by Act or resolution of the General Assembly;

(5) Acquisitions of real property by authorities or similar instrumentalities of the state unless otherwise required by law to have approval of the commission; and

(6) Acquisitions otherwise provided for by law or required by the nature of the transaction conveying real property to the state or any entity thereof,

all state entities shall acquire real property through the commission, and the title to all real property acquired shall be in the name of the state. The conveyance shall have written or printed in the upper right-hand corner of the initial page thereof the name of the state entity for which acquired who is the custodian thereof.

(b) The commission is authorized to establish, and amend when the commission deems it necessary, a procedure to facilitate the handling by the commission of requests for acquisition of real property.

(c) The state entity requesting acquisition of real property shall provide all of the funds necessary to acquire the real property.

(d) The commission is authorized to accept a donation or conveyance for nominal consideration of real property from a local governing authority with a reversionary interest therein, provided that the donation or conveyance shall only be accepted on the condition that such real property shall not revert while the property is being used for a public purpose as determined by the commission. This subsection shall not be construed as repealing any provisions of Code Section 12-6-9 or 35-2-41.

(e) Upon reversion of the state's interest in real property or a determination by the State Attorney General that the state no longer has an interest in real property, the commission is authorized to execute an appropriate instrument of conveyance to clear the record title. The commission shall not convey any interest in real property out of this state and any instrument purporting to make an out of state conveyance shall be null and void. (Code 1933, § 91-112a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1988, p. 1252, § 6; Ga. L. 2005, p. 100, § 13/SB 158; Ga. L. 2008, p. 335, § 10/SB 435; Ga. L. 2010, p. 836, § 1/SB 455; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2010 amendment, effective July 1, 2010, rewrote subsection (a); and added subsections (d) and (e).

The 2012 amendment, effective May

1, 2012, part of an Act to revise, modernize, and correct the Code, revised capitalization in the ending undesignated paragraph of subsection (a).

50-16-41. Rental agreements without competitive bidding authorized; limitations; commission charged with managing administrative space of all state entities; standards governing the utilization of administrative space; reassignment of administrative space; rules and regulations.

Delayed effective date. — Ga. L. 2012, p. 989, § 1/SB 37, provides that the 2012 amendment becomes effective on January 1, 2013, upon ratification of a resolution at the November, 2012, state-wide general election providing for the authorization of agencies to enter into lease and rental contracts exceeding one year. This Code section as amended is not set out in the Code owing to the delayed effective date. After the ratification is

made, this Code section will read as follows: “(a) Notwithstanding any provisions and requirements of law to the contrary and particularly notwithstanding the requirements of Code Section 50-16-39, the commission is authorized to negotiate, prepare, and enter into in its own name rental agreements whereby a part of the property is rented, without public competitive bidding, to a person for a length of time not to exceed one year and

for adequate monetary consideration (in no instance to be less than a rate of \$250.00 per year), which shall be determined by the commission, and pursuant to such terms and conditions as the commission shall determine to be in the best interest of the state. The same property or any part thereof shall not be the subject matter of more than one such rental agreement to the same person unless the commission shall determine that there are extenuating circumstances present which would make additional one-year rental agreements beneficial to the state; provided, however, the same property or any part thereof shall not after April 24, 1975, be the subject matter of more than a total of three such one-year rental agreements to the same person.

“(b) The commission is given the authority and charged with the duty of managing the utilization of administrative space by all state entities, except that the Board of Regents of the University System of Georgia and the Georgia Department of Labor may manage their own space but only for leases that are for a term of one year or less, within the State of Georgia, and required for their core mission. The commission shall manage the utilization of administrative space for all multiyear lease agreements entered into on behalf of any state entity, including the Board of Regents of the University System of Georgia and the Georgia Department of Labor. The commission shall manage in a manner that is the most cost efficient and operationally effective and which provides decentralization of state government. Such management shall include the authority to assign and reassign administrative space to state entities based on the needs of the entities as determined by standards for administrative space utilization promulgated by the commission pursuant to subsection (g) of this Code section and shall include the obligation to advise the Office of Planning and Budget and state entities of cost-effective, decentralized alternatives.

“(c) The management of the utilization of administrative space by the commission shall include entering into any necessary agreements to rent or lease administrative space, whether existing or to be con-

structed, and shall include administrative space rented or leased by a state entity from the Georgia Building Authority or from any other public or private person, firm, or corporation. When it becomes necessary to rent or lease administrative space, the space shall be rented or leased by the commission for a term not to exceed 20 years. The space shall be assigned to the state entity or entities requiring the space. A multiyear lease resulting from a sale and lease back shall be treated as a conveyance of real property by the state and shall be reviewed for approval or disapproval by the General Assembly and Governor in the same manner as a conveyance of state properties provided for in Code Section 50-16-39.

“(d) If the commission reassigns all or any portion of any administrative space which is leased or rented by one state entity to another state entity, the state entity to which the administrative space is reassigned may pay to the commission rental charges, as determined by the commission, for the utilization of the space; and the commission may, in turn, use the rental charges so paid for the purpose of paying or partially paying, as the case may be, the rent or lease payments due the lessor of the administrative space in accordance with the terms of the lease or rent contract existing at the time of the reassignment of the administrative space. Any such payments to a lessor by the commission shall be on behalf of the state entity which is the lessee of the administrative space reassigned as provided in this Code section.

“(e) The management of the utilization of administrative space given to the commission by this Code section shall not be construed to impair the obligation of any contract executed before July 1, 1976, between any state entity and the Georgia Building Authority or between any state entity and any other public or private person, firm, or corporation; and the powers given to the commission by this Code section shall not be implemented or carried out in such a manner as to impair the obligation of any such contract.

“(f) The commission is authorized and directed to develop and promulgate standards governing the utilization of admin-

istrative space by all state entities which require emphasis on cost effectiveness and decentralization. The standards shall be uniformly applied to all state entities except as otherwise provided by subsection (g) of this Code section, but the standards shall recognize and provide for different types of administrative space required by the various state entities and the different types of administrative space that may be required by a single state entity.

“(g) The commission shall be authorized to reassign administrative space to the various state entities in order to bring the utilization of administrative space into conformity with the standards promulgated under subsection (f) of this Code section. Any additional administrative space required by a state entity shall be approved by and obtained through the commission. The commission shall be authorized to grant exceptions to the standards governing the utilization of administrative space when the reassignment of such space would involve unnecessary expenses or the disruption of services being provided by a state entity. The commission shall adopt and promulgate rules and regulations governing the granting of such exceptions, and the rules and regulations shall be uniformly applied by the commission to all state entities requesting an exception to the standards.

“(h) For purposes of cost effectiveness and decentralization, the following factors, among other factors, shall be considered:

“(1) Dual location of programs within a city should be considered in order to take advantage of possible economies of scale and as a matter of convenience to the general public; or

“(2) When all factors are reasonably equivalent, preferences will be given to location of state government programs and facilities in those counties which are determined by the Department of Community Affairs to be the most economically depressed, meaning those 71 tier 1 counties of the state designated as least developed under paragraph (2) of subsection (b) of Code Section 48-7-40.

“(i) The commission is authorized and directed to promulgate rules and regula-

tions governing budgetary requirements for administrative space utilized by state entities in cooperation with the Office of Planning and Budget whereby the entities shall be accountable in the budgetary process for administrative space assigned to and utilized by them. The budgetary requirements may provide for the payment of rent to the commission by state entities or may otherwise provide procedures for the assessment of rent charges for administrative space utilized by state entities or any combination of the foregoing.

“(j) The commission shall provide a multiyear leasing report annually, no later than September 1 of each year, to the Governor, President of the Senate, Speaker of the House of Representatives, chairpersons of the Senate Appropriations Committee and the House Committee on Appropriations, and chairpersons of the Senate State Institutions and Property Committee and the House Committee on State Institutions and Property. The report shall provide the total sum of all leasing obligations to be paid by the state for the upcoming fiscal year. Such report shall include an itemization and total of all revenues collected from the previous fiscal year and provide an itemized budget allocation for the upcoming fiscal year. The report shall also provide a list of all existing multiyear lease agreements and the identity of the contracting parties for each.

“(k) In addition to the standards and rules and regulations specifically provided for by this Code section, the commission is authorized to adopt such other rules and regulations as may be required to carry out this Code section efficiently and effectively.

“(l)(1) The Georgia State Financing and Investment Commission is authorized to establish fiscal policies regarding multiyear lease and rental agreements and, each fiscal year, may establish a total multiyear contract value authority. During the fiscal year, the multiyear contract value authority may be revised as determined necessary by the Georgia State Financing and Investment Commission. The total multiyear contract value authority may be based upon the Governor's revenue estimate for subsequent fiscal

years and other information as determined by the Georgia State Financing and Investment Commission.

“(2) No multiyear lease or rental agreement shall be entered into under the provisions of this Code section until the Georgia State Financing and Investment Commission has established the fiscal policies and multiyear contract value authority for the current and future fiscal years. Any multiyear lease or rental agreement entered into that is not in compliance with such fiscal policies and multiyear contract value authority shall be void and of no effect.

“(3) At the beginning of each fiscal year, a budget unit’s appropriations shall be encumbered for the estimated payments for any multiyear lease and rental agreements in that fiscal year. The commission shall have the right to terminate, without further obligation, any multiyear lease or rental agreement if the commission determines that adequate funds will not be available for the payment obligations of the commission under the agreement. The commission’s determination regarding the availability of funds for its obligations

shall be conclusive and binding on all parties to the multiyear lease or rental agreement.”

The 2012 amendment, in subsection (b), in the first sentence inserted “for a term of one year or less,” and inserted a comma following “Georgia” and added the present second sentence; in subsection (c), substituted “for a term not to exceed 20 years. The space shall be” for “and” in the second sentence and added the last sentence; substituted “may” for “shall” twice in subsection (d); added present subsection (j); redesignated former subsection (j) as present subsection (k); and added subsection (l). For effective date of this amendment, see the delayed effective date note.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

50-16-42. Revocable license agreements without competitive bidding authorized; terms and conditions; telephone lines construction provisions unaffected; exception.

(a) Notwithstanding any provisions and requirements of law to the contrary and particularly notwithstanding the requirements of Code Section 50-16-39, the commission shall have the exclusive power to negotiate, prepare, and grant in its own name, without public competitive bidding, a revocable license to any person to enter upon, extend from, cross through, over, or under, or otherwise to encroach upon any of the property under the custody and control of the commission or under the custody and control of any state agency which is subject to the requirements of Code Section 50-16-38.

(b) Any grant of revocable license by the commission to any person shall be in writing and shall contain such terms and conditions as the commission shall determine to be in the best interest of the state, provided that:

(1) Each grant of revocable license, if not revoked prior to, shall stand revoked, canceled, and terminated as of the third anniversary of the date of the revocable license agreement;

(2) Each grant of revocable license shall provide that, regardless of any and all improvements and investments made, consideration paid,

or expenses and harm incurred or encountered by the licensee, the same shall not confer upon the licensee any right, title, interest, or estate in the licensed premises nor confer upon the licensee a license coupled with an interest or an easement, such grant of a revocable license conferring upon the licensee and only the licensee a mere personal privilege revocable by the commission, with or without cause, at any time during the life of the revocable license;

(3) Each grant of revocable license shall be made for an adequate monetary consideration of not less than \$650.00, the adequacy of which shall be determined by the commission in considering the factors involved in each grant, particularly for whose principal benefit the revocable license is being granted; however, if the commission determines that the revocable license directly benefits the state, then any monetary consideration set by the commission shall be deemed adequate; and

(4) Any grant of revocable license shall be subject to approval by any appropriate state regulatory agency that the proposed use of the licensed property meets all applicable safety and regulatory standards and requirements.

(c) This Code section shall not be construed or interpreted as amending, conflicting with, or superseding any or all of Code Section 46-5-1, relating to the construction of telephone lines.

(d) This Code section shall not apply to the issuance or renewal of revocable licenses or permits for the construction and maintenance of boat docks on High Falls Lake. Such revocable licenses or permits shall be issued by the Department of Natural Resources pursuant to Code Section 12-3-34. (Code 1933, § 91-109A.1, enacted by Ga. L. 1971, p. 578, § 1; Code 1933, § 91-109.1A, as redesignated by Ga. L. 1972, p. 429, § 1; Code 1933, § 91-109a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1990, p. 1489, § 1; Ga. L. 1993, p. 396, § 2; Ga. L. 2012, p. 847, § 12/HB 1115.)

The 2012 amendment, effective July 1, 2012, deleted “telegraph or” preceding “telephone” near the end of subsection (c).

CHAPTER 17

STATE DEBT, INVESTMENT, AND DEPOSITORIES

Article 1

General Provisions

Sec.

- 50-17-2. Agreements to resell or repurchase United States government obligations at stated rate of interest; delivery and safekeeping of such obligations; investment in authorized securities.

Article 2

State Financing and Investment

- 50-17-21. Definitions.
 50-17-22. State Financing and Investment Commission.
 50-17-23. General obligation and guaranteed revenue debts; sinking and common reserve funds; appropriations; investments; taxation to pay debt service requirements.
 50-17-27. Application and investment of public debt proceeds by commission and by the Environmental Finance Authority.

Article 3

State Depositories

- 50-17-50. Creation of State Depository Board; membership; quorum; board to name state depositories; assignment for administrative purposes.
 50-17-51. Meetings of State Depository Board; records; list of depositories; interest policy; cash man-

Sec.

- 50-17-52. agement policies and procedures.
 50-17-52. Contracts for interest on deposits; authority to remove deposits.
 50-17-53. Authority to determine amount to be deposited; deposit security required.
 50-17-54. Monitoring financial condition of depositories; action in case of insolvency of depository.
 50-17-56. State treasurer to make deposits in compliance with board's determinations.
 50-17-57. State treasurer to make reports.
 50-17-59. Deposit of securities in lieu of bond.
 50-17-62. Funds to be held by depositories.
 50-17-63. Deposit of demand funds; investment of funds; reports; remittance of interest earned; motor fuel tax revenues.

Article 5

Interest Rate Management

- 50-17-101. Guidelines, rules, and regulations for interest rate management plans and programs; state parties authorized to enter into, modify, or terminate interest rate management plans; disposition of payments under agreements; obligations, terms, and conditions; agency for state and oversight of the commission.

ARTICLE 1

GENERAL PROVISIONS

50-17-2. Agreements to resell or repurchase United States government obligations at stated rate of interest; delivery and safekeeping of such obligations; investment in authorized securities.

(a) Agencies, authorities, boards, public corporations, instrumentalities, retirement systems, and other divisions of state government authorized to invest in direct obligations of the United States government or in obligations unconditionally guaranteed by agencies of the United States government may do so by selling and purchasing such obligations under agreements to resell or repurchase the obligations at a date certain in the future at a specific price which reflects a premium over the purchase or selling price equivalent to a stated rate of interest. Delivery of the obligations purchased may be made by deposit through book entry in a safekeeping account maintained by the seller of the securities, in the name of the purchasing state entity or its agent, clearly indicating the interest of the purchasing state entity.

(b) In addition to the authorization in subsection (a) of this Code section, the state treasurer may invest in the securities authorized for direct investment by subsection (b) of Code Section 50-17-63 by selling and purchasing such obligations under agreements to resell or repurchase the obligations at a date certain in the future at a specific price which reflects a premium over the purchase or selling price equivalent to a stated rate of interest. Delivery of the obligations purchased may be made by deposit through book entry in a safekeeping account maintained by the seller of the securities, in the name of the Office of the State Treasurer or its agent, clearly indicating the interest of the Office of the State Treasurer. (Ga. L. 1980, p. 303, § 1; Ga. L. 1997, p. 569, § 2; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, in subsection (b), substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the first sentence and substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in two places in the second sentence.

OPINIONS OF THE ATTORNEY GENERAL

Repurchase agreements. — Office of the State Treasurer is empowered to enter into repurchase agreements and reverse repurchase agreements in connection with fulfilling its role related to managing the investment and liquidity needs of the state. 2012 Op. Att’y Gen. No. 12-1.

ARTICLE 2

STATE FINANCING AND INVESTMENT

50-17-21. Definitions.

As used in this article, the term:

(1) "Commission" means the Georgia State Financing and Investment Commission as defined by Article VII, Section IV, Paragraph VII of the Constitution, consisting of the Governor, the President of the Senate, the Speaker of the House of Representatives, the state auditor, the Attorney General, the state treasurer, and the Commissioner of Agriculture, and declared an agency and instrumentality of the state.

(2) "Constitution" means the Constitution of the State of Georgia of 1983.

(3) "Financial advisory matters" means all matters pertaining to the issuance of state debt and state authority bonds and the investment of funds created by the issuance of such debt or bonds and the performing of ministerial services in connection with the issuance, marketing, and delivery of all such debt or bonds. Financial advice shall include the development and recommendation to state authorities of a financial plan which will provide state authorities with required funds.

(4) "Fiscal officer of the state" means the state treasurer or such other officer as may be designated by a valid Act of the General Assembly to perform the functions of the state treasurer with respect to public debt.

(5) "General obligation debt" means obligations of this state issued pursuant to this article to acquire, construct, develop, extend, enlarge, or improve land, waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945, adopted November 8, 1960, for which the full faith, credit, and taxing power of the state are pledged for the payment thereof. "General obligation debt" also means obligations of this state issued to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. "General obligation debt" further means debt incurred to make loans to counties, municipal corporations, political

subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems.

(6) “Guaranteed revenue debt” means revenue obligations issued by an instrumentality of the state pursuant to this article to finance toll bridges, toll roads, and any other land public transportation facilities or systems and water and sewer facilities or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes, the payment of which has been guaranteed by the state as provided in this article.

(7) “Public debt” means any debt authorized by Article VII, Section IV of the Constitution.

(8) “Sinking fund” means the State of Georgia General Obligation Debt Sinking Fund established by this article.

(9) “State authorities” means the following instrumentalities of the state: Georgia Building Authority, Georgia Building Authority (Hospital), Georgia Building Authority (Markets), Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, State Road and Tollway Authority, Georgia Ports Authority, Georgia Development Authority, Jekyll Island—State Park Authority, Stone Mountain Memorial Association, North Georgia Mountains Authority, Lake Lanier Islands Development Authority, Groveland Lake Development Authority, Georgia Higher Education Assistance Authority, the Georgia Housing and Finance Authority, and other instrumentalities of the state created by the General Assembly and authorized to issue debt and not specifically exempt from this article. (Ga. L. 1973, p. 750, § 2; Ga. L. 1974, p. 171, § 1; Ga. L. 1979, p. 401, §§ 1-5; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 4; Ga. L. 1983, p. 1024, § 1; Ga. L. 1984, p. 22, § 50; Ga. L. 1987, p. 642, § 1; Ga. L. 1988, p. 426, § 2; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2010, p. 863, § 6/SB 296; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2010 amendment, effective July 1, 2010, in paragraph (4), substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the beginning and substituted “the state treasurer” for “such director” near the end.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, deleted “Georgia

Building Authority (Penal),” preceding “Georgia Building Authority (Markets)” near the beginning of paragraph (9).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “the state treasurer” was substituted for “the director of the Office of Treasury and Fiscal Services” in paragraph (1).

50-17-22. State Financing and Investment Commission.

(a) **Responsibilities.** Subject to the limitations contained in this article, the commission shall be responsible for the issuance of all public

debt incurred hereunder, for the proper application of the proceeds of such debt to the purposes for which it is incurred, for the proper application of an appropriation to the commission for capital outlay to the purpose for which it is appropriated, and for the application and administration of this article; provided, however, that the proceeds of guaranteed revenue obligations shall be paid to the issuer thereof, and such proceeds and the application thereof shall be the responsibility of the issuer. The commission shall also be responsible for the proper disbursement of an appropriation to it for public school capital outlay, and the commission and the State Board of Education will be concurrently responsible for its proper application. The commission shall be responsible for the issuance of guaranteed revenue debt, except that bonds themselves evidencing such debt shall be in the name of the instrumentality of this state issuing the same and shall be issued and executed in accordance with the laws relative to such instrumentality and the applicable provisions of this article.

(b) Organization.

(1) The Governor shall serve as the chairperson and chief executive officer; the presiding officer of the Senate shall serve as the vice chairperson of the commission; and the state auditor shall serve as secretary and treasurer. The chairperson or vice chairperson or secretary and treasurer shall be the presiding officer at each meeting of the commission.

(2) There shall be a construction division of the commission administered by a director who shall not be a member of the commission and who shall also serve as the executive secretary for the commission. The director and the staff of the construction division shall be appointed by and serve at the pleasure of the commission, shall provide administrative support for all personnel of the commission, and shall account for and keep all records pertaining to the operation and administration of the commission and its staff. The director, as executive secretary, shall prepare agendas and keep minutes of all meetings of the commission. In construction and construction related matters, the construction division shall act in accordance with the policies, resolutions, and directives of the Georgia Education Authority (Schools) and the Georgia Education Authority (University) until such time as such policies, resolutions, or directives are changed or modified by the commission. In carrying out its responsibilities in connection with the application of any funds under its control, including the proceeds of any debt or any appropriation made directly to it for construction purposes, the commission is specifically authorized to acquire and construct projects for the benefit of any department or agency of the state or to contract with any such department or agency for the acquisition or construction of

projects under policies, standards, and operating procedures to be established by the commission; provided, however, that the commission shall contract with the Department of Transportation or the Georgia Highway Authority or the State Road and Tollway Authority or any combination of the foregoing for the supervision of and contracting for design, planning, building, rebuilding, constructing, reconstructing, surfacing, resurfacing, laying out, grading, repairing, improving, widening, straightening, operating, owning, maintaining, leasing, and managing any public roads and bridges for which general obligation debt has been authorized. The construction division also shall perform such construction related services and grant administration services for state agencies and instrumentalities and for local governments, instrumentalities of local governments, and other political subdivisions as may be assigned to the commission or to the construction division by executive order of the Governor.

(3) There shall also be a financing and investment division of the commission administered by a director who shall not be a member of the commission. The director shall be appointed by and serve at the pleasure of the commission. The financing and investment division shall perform all services relating to issuance of public debt, the investment and accounting of all proceeds derived from incurring general obligation debt or such other amounts as may be appropriated from time to time to the commission for capital outlay purposes, the guaranteed revenue debt and the proceeds thereof as may be directed by the commission and the issuer, the management of all other state debt, and such financial advisory matters and general accounting duties as are not specifically assigned to the executive secretary in paragraph (2) of this subsection and in subsection (g) of this Code section. The director of the financing and investment division shall report directly to the commission on all matters pertaining to the functions and duties assigned to the division.

(4) Members of the commission shall serve without compensation but shall receive actual expenses incurred by them in the performance of their duties. The expenses, including mileage, shall be paid on the same basis as for other state officials and employees.

(c) **Meetings.** The commission shall hold regular meetings as it deems necessary, but, in any event, not less than one meeting shall be held in each calendar quarter. The commission shall meet at the call of the chairperson, vice chairperson, or secretary and treasurer or a majority of the members of the commission. Meetings of the commission shall be subject to Chapter 14 of this title, and its records shall be subject to Article 4 of Chapter 18 of Title 50. The commission shall approve the issuance of public debt, as hereinafter provided, adopt and amend bylaws, and establish salaries and wages of employees of the

commission only upon the affirmative vote of a majority of its members; all other actions of the commission may be taken upon the affirmative vote of a majority of a quorum present. A quorum shall consist of a majority of the members of the commission. If any vote is less than unanimous, the vote shall be recorded in the minutes of the commission.

(d) **Powers.** The commission shall have those powers set forth in the Constitution and the powers necessary and incidental thereto. In addition to such powers, the commission shall have power:

(1) To have a seal and alter the same at pleasure;

(2) To make contracts and to execute all instruments necessary or convenient, including contracts with any and all political subdivisions, institutions, or agencies of the state and state authorities, upon such terms and for such purposes as it deems advisable; and such political subdivisions, institutions, or agencies of the state and state authorities are authorized and empowered to enter into and perform such contracts;

(3) To employ such other experts, agents, and employees as may be in the commission's judgment necessary to carry on properly the business of the commission; to fix the compensation for such officers, experts, agents, and employees and to promote and discharge the same;

(4) To do and perform all things necessary or convenient to carry out the powers conferred upon the commission by this article;

(5) To make reasonable regulations or adopt the standard specifications or regulations of the Department of Transportation or the state authorities, or parts thereof, for the construction, reconstruction, building, rebuilding, renovating, surfacing, resurfacing, acquiring, leasing, maintaining, repairing, removing, installing, planning, or disposing of projects for which public debt has been authorized, or for such other purposes as deemed necessary by the commission; and

(6)(A) To apply for, arrange for, accept, and administer federal funds for capital outlay and construction related services and for authorization or payment of public debt.

(B) Without limitation, the commission may:

(i) Deposit or arrange for federal funds to be deposited into the State of Georgia General Obligation Debt Sinking Fund or into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund, and the fiscal officer of the state shall accept such deposits;

(ii) Arrange for the disbursement of federal funds directly to trustees, paying agents, or other persons for the payment of public debt;

(iii) Cooperate with any public agency, authority, or officer in applying for, accepting, and administering federal funds for public purposes mutual to the commission and any other agency, authority, or officer;

(iv) Apply or arrange to participate in and take all actions the commission determines appropriate to obtain the benefits of federal programs which provide tax credits, incentives, or other inducements to the state or to holders of public debt;

(v) Apply or arrange to participate in federal programs which require the allocation of funds or bonding authority among geographical areas, governmental jurisdictions and entities, or other categories, and perform such allocation, including mandating, requiring, treating, or deeming the waiver of any local allocation by way of resolution or policy of the commission, unless another officer, agency, or instrumentality is explicitly authorized by state law to perform such allocation and all officers, agencies, or instrumentalities are required to provide such assistance, cooperation, and information as the commission directs related to any federal programs. In such cases where the commission has allocated funds or bonding authority or mandated, required, treated, or deemed the waiver of any allocation, any local governmental entity desiring to issue obligations of any type that are dependent upon a waived allocation shall only be lawfully permitted to do so in a manner that is consistent with the actions of the commission; and any notice to the district attorney or the Attorney General, pursuant to Code Section 36-82-20 or 36-82-74 or any similar provision of law, by any local governmental entity shall include a certification that the issuance of such obligations is consistent with the actions of the commission. No court shall have jurisdiction to consider any petition regarding the validation of any such obligations, whether pursuant to Article 2 or Article 3 of Chapter 82 of Title 36 or any other similar provision of law, in the absence of such certification when required by this division;

(vi) Establish and apply criteria for determining a reasonable expectation of the state that an allocation made pursuant to division (v) of this subparagraph will not be used by a local governmental entity so that the commission may mandate, require, treat, or deem such allocation as waived; and

(vii) Apply or arrange to participate in any other federal program which provides benefits consistent with state law and supportive of functions of the commission.

(C) The use of federal funds as part of the authorization for the issuance of general obligation debt or the issuance of guaranteed

revenue debt shall be by appropriation as provided by law. The payment of federal funds into the sinking fund to pay annual debt service requirements shall be by appropriation or by direction of the commission in the absence of appropriation. The payment of federal funds into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund as part of the common reserve shall be by appropriation or by direction of the commission in the absence of appropriation.

(D) The commission may delegate to the fiscal officer of the state its authority to arrange for and accept federal funds as provided in this Code section.

(e) **Records.** Except for those records specifically designated in this article to be kept by the fiscal officer of the state, the commission shall be responsible for keeping the records provided for in this article and such other records as it deems necessary or convenient for the administration of this article.

(f) **Advisory and service function.**

(1) The commission is further vested with complete and exclusive authority and jurisdiction in all financial advisory matters relating to the issuance or incurrence of debt by state authorities as defined in paragraph (9) of Code Section 50-17-21; and no such state authority shall be authorized, without the approval of the commission, to employ other financial or investment advisory counsel in any matter whatsoever or to incur debt without the specific approval of the commission.

(2) When the commission performs financial advisory or construction related services, the state authority or state agency requiring such services shall reimburse the commission for such services.

(g) **Budget unit; budget.**

(1) The commission is designated a budget unit and shall be subject to Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act."

(2) The executive secretary shall prepare, under the direction and supervision of the commission, any budgets, requests, estimates, records, or other documents deemed necessary or efficient for compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," to provide for the payment of personnel services, operating expense, and administration and otherwise carry out this article. The commission may but need not receive an appropriation for personnel, administrative services, and other operating expenses of the commission. The commission may but need not receive an appropriation for the costs of issuance, validation, and delivery of obligations to be

incurred, including, but not limited to, trustee's fees, paying agent fees, printing fees, bond counsel fees, district attorney fees, clerk of the superior court fees, architect fees, and engineering fees, which costs and fees are dependent on the principal amount of the obligations incurred and are determined to be appropriate costs of the project or projects for which such obligations are incurred and are authorized to be paid from bond proceeds. The commission may but need not receive an appropriation for expenditures made for fees and expenses incurred in safeguarding and protecting public health, life, and property in connection with projects for which general obligation debt has been incurred.

(h) **Retirement system.** All officers and employees of the commission shall be qualified to be and shall become members of the Employees' Retirement System of Georgia; provided, however, that any such officer or employee who was on April 13, 1973, an officer or employee of any state agency, authority, department, or instrumentality and a member or participant in any annuity or retirement program other than the Employees' Retirement System of Georgia, which person hereinafter is referred to as a "present employee," may elect to remain under such other annuity or retirement program or to transfer membership to the Employees' Retirement System of Georgia. The commission is authorized to perform and shall perform all obligations of employer if such present employee shall elect to remain under such other annuity or retirement program. A present employee electing to transfer membership to the Employees' Retirement System of Georgia under this article shall give notice of electing to transfer membership to the Board of Trustees of the Employees' Retirement System of Georgia and simultaneously therewith shall give to the governing body of the other annuity or retirement program notice that it shall transfer to the Board of Trustees of the Employees' Retirement System of Georgia the employer's and employee's contributions standing to his account. From and after the date of transfer of contributions, the present employee electing to transfer membership shall be a member of the Employees' Retirement System of Georgia with membership service and prior service credits equivalent to those he would have accrued had he been a member of the Employees' Retirement System of Georgia throughout the period of transferred creditable service. In lieu of the foregoing election, any present employee wishing to retain his rights under any private annuity or retirement program may assume responsibility for the payment of all costs of such program and may elect to become a member of the Employees' Retirement System of Georgia effective the date upon which he becomes an officer or employee of the commission. Any present employee so electing to retain his rights may also receive membership service credit and prior service credit under the Employees' Retirement System of Georgia for all or part of his service with any

state agency, authority, department, or instrumentality, plus military service credit as otherwise provided by law, by paying to the Board of Trustees of the Employees' Retirement System of Georgia, on terms acceptable to the Board of Trustees, all the employee's contributions, plus regular interest thereon, which would have stood to his credit had he been a member of the Employees' Retirement System of Georgia during the period of creditable service sought to be established. In the event of the latter election, the commission shall pay all employer's contributions, plus regular interest thereon, attributable to the creditable service sought to be established. Any elections under this subsection shall be made in writing within six months from the date of appointment to office or employment by the commission.

(i) **Surety bonds.** All members and officers of the commission and such employees as the commission may designate shall be surety bonded in such amounts as determined by the commission.

(j) **Exemptions from laws.** The commission shall not be subject to the following:

(1) Articles 3 and 4 of Chapter 5 of this title;

(2) Subpart 2 of Part 2 of Article 4 of Chapter 12 of Title 45, relating to approval of contracts;

(3) Article 1 of Chapter 20 of Title 45; or

(4) Code Sections 45-12-82, 45-12-83, 45-12-89, and 45-12-92. (Ga. L. 1973, p. 750, § 3; Ga. L. 1974, p. 1213, § 1; Ga. L. 1979, p. 401, § 7; Ga. L. 1982, p. 3, § 50; Ga. L. 1988, p. 227, § 7; Ga. L. 1994, p. 97, § 50; Ga. L. 2001, p. 496, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2005, p. 642, § 3/SB 227; Ga. L. 2009, p. 139, § 11/HB 581; Ga. L. 2010, p. 123, § 1/HB 1258; Ga. L. 2010, p. 863, § 4/SB 296; Ga. L. 2011, p. 752, § 50/HB 142; Ga. L. 2012, p. 218, § 16/HB 397.)

The 2010 amendments. — The first 2010 amendment, effective May 20, 2010, in division (d)(6)(B)(v), inserted “, including mandating, requiring, treating, or deeming the waiver of any local allocation by way of resolution or policy of the commission,” near the middle of the first sentence, added the last two sentences, and deleted “and” at the end; added division (d)(6)(B)(vi); and redesignated former division (d)(6)(B)(vi) as present division (d)(6)(B)(vii). The second 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director” throughout paragraphs (b)(2) and (b)(3).

The 2011 amendment, effective May

13, 2011, part of an Act to revise, modernize, and correct the Code, in paragraph (b)(1) and in subsection (c), substituted “chairperson” for “chairman” and “vice chairperson” for “vice-chairman”; in paragraphs (b)(2) and (b)(3), substituted “director” for “state treasurer”; substituted “agendas” for “agenda” in the third sentence of paragraph (b)(2); and revised punctuation in division (d)(6)(B)(i).

The 2012 amendment, effective April 17, 2012, substituted “Article 4 of Chapter 18 of Title 50” for “Code Sections 50-18-70 and 50-18-71” in the third sentence of subsection (c).

50-17-23. General obligation and guaranteed revenue debts; sinking and common reserve funds; appropriations; investments; taxation to pay debt service requirements.

(a) **General obligation debt.** General obligation debt may not be incurred until the General Assembly has enacted legislation stating the purposes, in general or specific terms, for which such issue of debt is to be incurred, specifying the maximum principal amount of the issue, and appropriating an amount at least sufficient to pay the highest annual debt service requirements for the issue. Appropriations made in each fiscal year, as provided in this subsection, for debt service purposes shall not lapse for any reason and shall continue in effect until the debt for which such appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the incurring of such debt. Following the incurring of debt in any fiscal year for any purpose for which an appropriation has been made, there shall be deposited in the sinking fund provided for in paragraph (1) of this subsection an amount equal to the highest annual debt service requirements for such debt coming due in any succeeding fiscal year. On or prior to the end of such fiscal year, the commission shall certify to the fiscal officer of the state the amount of the appropriation for any purpose which has been transferred to the sinking fund and the amount of the anticipated highest annual debt service requirement of debt authorized to be issued in such fiscal year for any purpose by resolution of the commission but which actually will be incurred in the next succeeding fiscal year. The remaining appropriation for any purpose, after deducting the aggregate amounts described in the preceding sentence, shall lapse, except that any such amount attributable to an appropriation to general obligation debt for the construction and improvement of public roads and bridges shall not lapse but shall be paid to the Department of Transportation. The General Assembly may provide in an appropriation of highest annual debt service requirements that if the commission determines not to incur the debt so authorized, the commission may expend the appropriation as capital outlay for the purposes specified in the appropriation. The appropriation as capital outlay shall lapse at the end of the fiscal year of the appropriation unless committed as provided by law. The appropriation as highest annual debt service shall expire as authorization for debt when the funds are committed as capital outlay but shall otherwise lapse as provided by law.

(1) **Sinking fund.** The General Assembly shall appropriate to a special trust fund designated "State of Georgia General Obligation Debt Sinking Fund" such amounts as are necessary to pay annual debt service requirements on all general obligation debt incurred

hereunder. The sinking fund shall be used solely for retirement of general obligation debt payable therefrom.

(2) **Failure to appropriate; insufficient moneys in sinking fund.** If the General Assembly shall fail to make any appropriation or if for any reason the moneys in the sinking fund are insufficient to make all payments required with respect to such general obligation debt as and when the same becomes due, the state treasurer shall set apart from the first revenues thereafter received, applicable to the general fund of the state, such amounts as are necessary to cure any such deficiencies and shall immediately deposit the same into the sinking fund. The state treasurer may be required to set aside and apply such revenues as aforesaid at the action of any holder of any general obligation debt incurred under this article. The obligation to make such sinking fund deposits shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976.

(3) **Sinking fund investments.** The moneys in the sinking fund shall be as fully invested as practical, consistent with the requirements to make current principal and interest payments. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from date of purchase.

(4) **Highway appropriations.** Appropriations to the sinking fund for debt service requirements attributable to public debt incurred or to be incurred for construction, reconstruction, and improvement of public roads and bridges shall be considered as an appropriation for activities incident to providing and maintaining an adequate system of public roads and bridges in this state for the purpose of Article III, Section IX, Paragraph VI(b) of the Constitution.

(b) **Guaranteed revenue debt.** Guaranteed revenue debt may not be incurred until the General Assembly has enacted legislation authorizing the guarantee of the specific issue of revenue obligations then proposed, reciting that the General Assembly has determined such obligations will be self-liquidating over the life of the issue, which determination shall be conclusive, specifying the maximum principal amount of such issue, and appropriating an amount at least equal to the highest annual debt service requirements for such issue. After the General Assembly has enacted legislation authorizing the guarantee of a specific issue of revenue bonds by an instrumentality of the state or state authority, the commission shall approve the issuance of such

bonds and thereafter such instrumentality or state authority shall actually authorize the issuance of its revenue bonds in accordance with the Act of the General Assembly, including amendments thereto, authorizing the issuance of revenue bonds by such instrumentality or state authority and the applicable provisions of this article.

(1) **Common reserve fund.** Appropriations made in connection with guaranteed revenue debt shall be paid, upon the issuance of the obligations, into a special trust fund to be designated "State of Georgia Guaranteed Revenue Debt Common Reserve Fund" to be held together with all other sums similarly appropriated as a common reserve for any payments which may be required by virtue of any guarantee entered into in connection with any issue of guaranteed revenue obligations. This Guaranteed Revenue Debt Common Reserve Fund shall be held and administered by the state treasurer. All such appropriations for the benefit of guaranteed revenue debt shall not lapse for any reason and shall continue in effect until the debt for which the appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the payment of the same into the common reserve fund.

(2) **Insufficient moneys in common reserve fund.** If any payments are required to be made from the State of Georgia Guaranteed Revenue Debt Common Reserve Fund to meet debt service requirements on guaranteed revenue obligations by virtue of an insufficiency of revenues, the state treasurer shall pay to the designated paying agent, upon certification by the issuing instrumentality as to the insufficiency of such revenues, from the common reserve fund, the amount necessary to cure such deficiency. The state treasurer shall then reimburse such fund from the general funds of the state within ten days following the commencement of any fiscal year of the state for any amounts so paid. The state treasurer may be required to apply such funds as aforesaid with respect to guaranteed revenue debt at the action of any holder of any such guaranteed revenue obligations. The obligation to make any such reimbursements shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and shall also be subordinate to the obligation hereinabove imposed upon the state treasurer to make sinking funds deposits for the benefit of general obligation debt.

(3) **Minimum balance required; excess moneys; investments.** The amount to the credit of the common reserve fund shall at all times be at least equal to the aggregate highest annual debt service requirements on all outstanding guaranteed revenue obliga-

tions entitled to the benefit of such fund. If at the end of any fiscal year of the state the fund is in excess of the required amount, the state treasurer, upon certification of the state accounting officer, shall transfer such excess to the general funds of the state, free of such trust. The funds in the common reserve shall be as fully invested as is practical, consistent with the requirements of guaranteeing the principal and interest payments on the revenue obligations guaranteed by the state. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from the date of purchase.

(c) **Requirement for taxation.** The General Assembly shall raise by taxation each fiscal year, in addition to the sums necessary to make all payments required to be made under contracts entitled to the protection of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and to pay public expenses, such amounts as are necessary to pay debt service requirements in such fiscal year on all general obligation debt incurred hereunder and to maintain at all times the Guaranteed Revenue Debt Common Reserve Fund in the full amount required by the Constitution and this article.

(d) **Variable rate debt.**

(1) As used in this subsection, the term "variable rate debt" means general obligation debt bearing interest at a variable interest rate.

(2) Variable rate debt may be incurred in the following manner:

(A) For purposes of calculating the highest annual debt service requirements for variable rate debt, interest may be calculated at the maximum rate of interest that may be payable during any one fiscal year, after taking into account any credits permitted in the related bond resolution, indenture, or other instrument against such amount;

(B) Any resolution authorizing general obligation debt which is variable rate debt, in lieu of stating the rate or rates at which such variable rate debt shall bear interest and the price or prices at which such variable rate bonds shall be initially sold or remarketed, in the event of purchase and subsequent resale, may provide that such interest rates and prices may vary from time to time depending on criteria established in the approving resolution, which criteria may include, without limitation, references to indices or variations in interest rates as may, in the judgment of a remarketing agent, be necessary to cause variable rate debt to be remarketable from time to time at a price equal to its principal amount and may provide for the appointment of a bank, trust

company, investment bank, or other financial institution to serve as remarketing agent for such purposes. The resolution for any variable rate debt may provide that alternate interest rates or provisions for establishing alternate interest rates, different security or claim priorities, or different call or amortization provisions will apply during such times as the variable rate debts are held by a person providing credit or liquidity enhancement arrangements for such debt as authorized in subparagraph (C) of this paragraph. The resolution may also provide for such variable rate debt to bear interest at rates established pursuant to a process generally known as an auction rate process and may provide for appointment of one or more financial institutions or investment banks to serve as auction agents and broker-dealers in connection with the establishment of such interest rates and sale and remarketing of such debt;

(C) In connection with the issuance of any variable rate debt, the state may enter into arrangements to provide additional security and liquidity for such debt, including without limitation, bond or interest rate insurance or letters of credit, bond purchase contracts, or other arrangements whereby funds are available to retire or purchase such variable rate debt, thereby assuring the ability of owners of the variable rate debt to sell or redeem such debt. The state may enter into contracts and may agree to pay fees to persons providing such arrangements, but only under circumstances where the appropriate officer has certified that he or she reasonably expects that the total interest paid or to be paid on the variable rate debt, together with the fees for the arrangements, being treated as if interest, would not, taken together, cause the debt to bear interest, calculated to its stated maturity, at a rate in excess of the rate that the debt would bear in the absence of such arrangements; and

(D) The state may enter into qualified interest rate management agreements with respect to any variable rate debt. Net payments for such qualified interest rate management agreements shall constitute interest on the variable rate debt and shall be paid from the same source as payments on the variable rate debt. During the term of any qualified interest rate management agreement, annual debt service requirements of the variable rate debt may be calculated taking into account any amounts to be paid or received pursuant to the terms of such qualified interest rate management agreement. (Ga. L. 1973, p. 750, § 4; Ga. L. 1974, p. 171, § 2; Ga. L. 1979, p. 401, §§ 8-13; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 3, § 66; Ga. L. 1986, p. 339, § 1; Ga. L. 1990, p. 8, § 50; Ga. L. 1993, p. 1402, § 18; Ga. L. 2004, p. 886, § 6; Ga. L. 2005, p. 694, § 13/HB 293; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" in paragraph (a)(2) and throughout subsection (b).

50-17-27. Application and investment of public debt proceeds by commission and by the Environmental Finance Authority.

(a) The commission shall be responsible for the proper application of the proceeds of public debt issued under this article to the purposes for which it is incurred; provided, however, that the proceeds from guaranteed revenue obligations shall be paid to the issuer thereof, and the proceeds and the application thereof shall be the responsibility of the issuer.

(b) Proceeds received from the sale of bonds evidencing general obligation debt shall be held in trust by the commission and disbursed promptly by the commission in accordance with the original purpose set forth in the authorization of the General Assembly and in accordance with rules and regulations established by the commission. Bond proceeds and other proceeds held by the commission shall be as fully invested as is practical, consistent with the proper application of such proceeds for the purposes intended. Investments shall be limited to general obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government, or to obligations issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or to tax exempt obligations issued by any state, county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit of such government, or to prime bankers' acceptances, or to the units of any unit investment trusts the assets of which are exclusively invested in obligations of the type described in this subsection, or to the shares of any mutual fund the investments of which are limited to securities of the type described in this subsection and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations or the obligations held by any such unit investment trust or the obligations held or to be acquired by any such mutual fund are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service or any rating service recognized by the commissioner of banking and finance, and no others, or to securities lending transactions involving securities of the type described in this subsection. Income earned on any such investments or otherwise earned by the commission shall be retained

by the commission and used to purchase and retire any public debt or any bonds or obligations issued by any public agency, public corporation, or authority which are secured by a contract to which the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 is applicable and may be used to pay operating expenses of the commission. However, in order to provide for contingencies, efficiency, and flexibility, the commission may agree by contract or grant agreement with county and independent school systems that income earned during grant administration on a direct appropriation of state funds to the commission for public school capital outlay will be applied to the capital outlay purposes of the appropriation. Otherwise, the interest on direct appropriations to the commission shall be deposited into the treasury.

(c) Notwithstanding subsections (a) and (b) of this Code section, the Georgia Environmental Finance Authority shall be the state authority responsible for the proper application of the proceeds of public debt issued under this article for the purpose of making loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems. Proceeds from the sale of such bonds shall be paid to the authority, which shall hold them in trust for their original purposes as set forth in the authorization of the General Assembly, as provided by law and in accordance with the rules and regulations established by the authority. Bond proceeds held by the authority shall be as fully invested as is practicable, consistent with the proper application of such proceeds for the purposes intended, and the authority shall contract with the Georgia State Financing and Investment Commission for the purpose of investing any such bond proceeds and the income therefrom. Investments shall be limited to those permitted to the authority or the Georgia State Financing and Investment Commission in the laws providing for their creation and activities. Income earned on any such investments of bond proceeds or the income therefrom shall be retained by the authority and used by it for its public purposes as provided by law. (Ga. L. 1973, p. 750, § 6; Ga. L. 1974, p. 1213, § 2; Ga. L. 1979, p. 401, § 18; Ga. L. 1980, p. 555, § 1; Ga. L. 1983, p. 3, § 66; Ga. L. 1986, p. 339, § 3; Ga. L. 1987, p. 642, §§ 3, 4; Ga. L. 2001, p. 496, § 2; Ga. L. 2003, p. 359, § 1; Ga. L. 2004, p. 319, § 2; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia

Environmental Facilities Authority” near the beginning of the first sentence of subsection (c).

ARTICLE 3

STATE DEPOSITORIES

50-17-50. Creation of State Depository Board; membership; quorum; board to name state depositories; assignment for administrative purposes.

The State Depository Board, referred to in this article as the "board," is created, consisting of the Governor, the Commissioner of Insurance, the state accounting officer, the commissioner of banking and finance, the state revenue commissioner, the commissioner of transportation, and the state treasurer, who shall act as administrative officer of the board. A majority of the board shall constitute a quorum, and the acts of the majority shall be the acts of the board. The board, in its discretion, may name and appoint, from time to time, as state depositories of state funds any bank or trust company which has its deposits insured by the Federal Deposit Insurance Corporation. The board may also name and appoint as state depositories of state funds any building and loan association or federal savings and loan association which has its deposits insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Georgia Credit Union Deposit Corporation. The board may also authorize any department, board, bureau, or other agency of the state which has a foreign office to deposit state funds for current operating expenses in certain foreign banks, the deposits of which are not insured by the Federal Deposit Insurance Corporation, provided the balance of such deposits in any one foreign bank does not exceed limits prescribed by the State Depository Board. For the purposes of this article, "foreign bank" shall mean a bank organized under the laws of a foreign country. The board is assigned to the Department of Administrative Services for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1878-79, p. 88, § 1; Code 1882, § 943a; Ga. L. 1888, p. 34, § 1; Ga. L. 1889, p. 54, § 1; Ga. L. 1890-91, p. 67, § 1; Ga. L. 1892, p. 54, § 1; Ga. L. 1893, p. 24, § 1; Ga. L. 1893, p. 25, § 1; Ga. L. 1893, p. 26, § 1; Ga. L. 1893, p. 27, § 1; Ga. L. 1893, p. 28, § 1; Ga. L. 1895, p. 21, § 1; Civil Code 1895, § 982; Ga. L. 1896, p. 39, § 1; Ga. L. 1897, p. 22, § 1; Ga. L. 1898, p. 46, § 1; Ga. L. 1899, p. 27, § 1; Ga. L. 1900, p. 43, § 1; Ga. L. 1901, p. 24, § 1; Ga. L. 1901, p. 25, § 1; Ga. L. 1901, p. 26, § 1; Ga. L. 1901, p. 27, § 1; Ga. L. 1901, p. 28, § 1; Ga. L. 1901, p. 29, § 1; Ga. L. 1902, p. 42, § 1; Ga. L. 1902, p. 43, § 1; Ga. L. 1902, p. 44, § 1; Ga. L. 1902, p. 45, § 1; Ga. L. 1902, p. 46, § 1; Ga. L. 1902, p. 47, § 1; Ga. L. 1902, p. 48, § 1; Ga. L. 1903, p. 28, § 1; Ga. L. 1903, p. 29, § 1; Ga. L. 1903, p. 30, § 1; Ga. L. 1903, p. 31, § 1; Ga. L. 1904, p. 56, § 1; Ga. L. 1904, p. 57, § 1; Ga. L. 1904, p. 58, § 1; Ga. L. 1905, p. 70, § 1; Ga. L. 1905, p. 71, § 1; Ga. L. 1905, p. 72, § 1; Ga. L. 1906, p. 34, § 1; Ga. L. 1906, p. 35,

§ 1; Ga. L. 1906, p. 36, § 1; Ga. L. 1906, p. 37, § 1; Ga. L. 1906, p. 38, § 1; Ga. L. 1906, p. 39, § 1; Ga. L. 1906, p. 40, § 1; Ga. L. 1906, p. 41, § 1; Ga. L. 1906, p. 42, § 1; Ga. L. 1907, p. 51, § 1; Ga. L. 1907, p. 52, § 1; Ga. L. 1907, p. 53, § 1; Ga. L. 1907, p. 54, § 1; Ga. L. 1908, p. 37, § 1; Ga. L. 1908, p. 38, § 1; Ga. L. 1908, p. 39, § 1; Ga. L. 1908, p. 40, § 1; Ga. L. 1909, p. 82, § 1; Ga. L. 1909, p. 83, § 1; Ga. L. 1909, p. 84, § 1; Ga. L. 1909, p. 85, § 1; Ga. L. 1909, p. 86, § 1; Civil Code 1910, § 1249; Ga. L. 1910, p. 50, § 1; Ga. L. 1910, p. 51, § 1; Ga. L. 1910, p. 52, § 1; Ga. L. 1910, p. 53, § 1; Ga. L. 1911, p. 57, § 1; Ga. L. 1911, p. 58, § 1; Ga. L. 1911, p. 59, § 1; Ga. L. 1911, p. 60, § 1; Ga. L. 1911, p. 61, § 1; Ga. L. 1911, p. 62, § 1; Ga. L. 1911, p. 63, § 1; Ga. L. 1911, p. 64, § 1; Ga. L. 1912, p. 47, § 1; Ga. L. 1912, p. 48, § 1; Ga. L. 1912, p. 49, § 1; Ga. L. 1912, p. 50, § 1; Ga. L. 1912, p. 51, § 1; Ga. L. 1913, p. 40, § 1; Ga. L. 1913, p. 41, § 1; Ga. L. 1914, p. 49, § 1; Ga. L. 1914, p. 50, § 1; Ga. L. 1914, p. 51, § 1; Ga. L. 1914, p. 52, § 1; Ga. L. 1914, p. 53, § 1; Ga. L. 1914, p. 54, § 1; Ga. L. 1914, p. 55, § 1; Ga. L. 1914, p. 56, § 1; Ga. L. 1915, p. 12, § 1; Ga. L. 1915, p. 13, § 1; Ga. L. 1915, p. 14, § 1; Ga. L. 1915, p. 15, § 1; Ga. L. 1916, p. 34, § 1; Ga. L. 1916, p. 35, § 1; Ga. L. 1916, p. 36, § 1; Ga. L. 1918, p. 111, § 1; Ga. L. 1919, p. 83, § 1; Ga. L. 1919, p. 84, § 1; Ga. L. 1920, p. 69, § 1; Ga. L. 1920, p. 70, § 1; Ga. L. 1920, p. 71, § 1; Ga. L. 1920, p. 72, § 1; Ga. L. 1920, p. 73, § 1; Ga. L. 1921, p. 98, § 1; Ga. L. 1921, p. 99, § 1; Ga. L. 1921, p. 100, § 1; Ga. L. 1922, p. 43, § 1; Ga. L. 1922, p. 44, § 1; Ga. L. 1922, p. 45, § 1; Ga. L. 1923, p. 54, § 1; Ga. L. 1923, p. 55, § 1; Ga. L. 1924, p. 49, § 1; Ga. L. 1925, p. 82, § 1; Ga. L. 1925, p. 83, § 1; Ga. L. 1925, p. 84, § 1; Ga. L. 1925, p. 85, § 1; Ga. L. 1925, p. 86, § 1; Ga. L. 1927, p. 140, § 1; Ga. L. 1927, p. 141, § 1; Ga. L. 1927, p. 142, § 1; Ga. L. 1929, p. 159, § 1; Ga. L. 1929, p. 161, § 1; Ga. L. 1929, p. 162, § 1; Ga. L. 1931, p. 119, § 1; Code 1933, § 100-101; Ga. L. 1949, p. 13, §§ 1, 2; Ga. L. 1960, p. 1144, § 1; Ga. L. 1969, p. 681, § 1; Ga. L. 1971, p. 553, § 1; Ga. L. 1972, p. 1015, § 413; Ga. L. 1973, p. 149, § 1; Ga. L. 1980, p. 763, § 1; Ga. L. 1986, p. 855, § 29; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 863, § 1; Ga. L. 1997, p. 1525, § 1; Ga. L. 2005, p. 694, § 14/HB 293; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2010 amendment, effective July 1, 2010, in the first sentence, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” and substituted “state treasurer” for “director”.

The 2012 amendment, effective May

1, 2012, part of an Act to revise, modernize, and correct the Code, deleted “referred to in this article as the ‘state treasurer,’” preceding “who shall” near the end of the first sentence.

50-17-51. Meetings of State Depository Board; records; list of deposits; interest policy; cash management policies and procedures.

(a) The board shall meet at least once every 90 days. The records and proceedings of the board shall be available for inspection by each member of the General Assembly. At the end of each quarter, the board shall furnish to the chairmen of the Senate and House Appropriations Committees, the chairman of the Senate Banking and Financial Institutions Committee, and the chairman of the House Banks and Banking Committee a list of all state time deposits, indicating the amount in each depository, the rates of interests contracted on such deposits, and the physical location of the depository.

(b) Compatible with the desirability of placing all state funds on deposit among state depositories and the necessity to maximize the protection of state funds on deposit, the policy to be followed by the board shall be that there will accrue to the state an advantageous yield of interest on its funds in excess of those required for current operating expenses, in accordance with sound business management practices.

(c) The board shall prescribe cash management policies and procedures and state agencies shall employ the cash management policies and procedures prescribed by the board. Cash management policies and procedures prescribed by the board shall be designed to maximize the efficient and effective utilization of the state's cash resources for the state as a whole. The board may require state agencies to submit reports and plans on such forms and at such times as the board may prescribe to determine whether an agency is in compliance with the cash management policies and procedures prescribed by the board. The state treasurer shall serve as cash management officer for the state on behalf of the board. (Code 1933, § 100-101.1, enacted by Ga. L. 1971, p. 553, § 2; Ga. L. 1973, p. 149, § 2; Ga. L. 1976, p. 728, § 1; Ga. L. 1986, p. 10, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 1992, p. 1247, § 1; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" in the last sentence of subsection (c).

50-17-52. Contracts for interest on deposits; authority to remove deposits.

The board shall make with depositories the most advantageous contracts for interest to be paid by them to the state for the use of the state's money which may be deposited therein, as provided by this article. In so doing, the board may authorize the state treasurer to negotiate with depositories explicit fees in payment for the state's banking services. Such fees shall be paid by the state treasurer from

interest earned and shall be subject to the board's approval. In the event any depository so named shall refuse to make a satisfactory contract with the board as to interest to be paid and fees to be charged, it shall have authority to remove state funds from such depository. (Ga. L. 1878-79, p. 88, § 2; Code 1882, § 943b; Ga. L. 1895, p. 22, § 1; Civil Code 1895, § 984; Civil Code 1910, § 1251; Code 1933, § 100-103; Ga. L. 1949, p. 13, § 8; Ga. L. 1992, p. 1247, § 2; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" in the second and third sentences.

50-17-53. Authority to determine amount to be deposited; deposit security required.

To enable the board to fulfill its responsibilities of ensuring safe and effective cash management, the board shall be authorized to determine, from time to time, in respect to all state funds, whether deposited by the state treasurer or any other department or agency of the state government, any and all of the following:

(1) The maximum amount of state money which may be deposited in a particular depository;

(2) The maximum and minimum proportion of state funds which may be maintained in a particular depository;

(3) The amount of state funds to be deposited in particular state depositories as time deposits, and the periods of such deposits, provided that all state depositories shall give security for state deposits as required by law, but the board, in its discretion, may choose not to require that security be given in the case of special deposits and operating funds; and

(4) The policies and procedures governing the collection, processing, deposit, and withdrawal of state funds. (Ga. L. 1949, p. 13, § 4; Ga. L. 1960, p. 1144, § 2; Ga. L. 1971, p. 553, § 4; Ga. L. 1973, p. 149, § 4; Ga. L. 1982, p. 3, § 50; Ga. L. 1992, p. 1247, § 3; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" in the introductory paragraph.

50-17-54. Monitoring financial condition of depositories; action in case of insolvency of depository.

It shall be the duty of the board to keep itself advised, from time to time, of the financial condition of the various state depositories, as well

as of the financial condition and standing of the securities on the bonds of the depositories; and, if at any time the board should become satisfied as to the insolvency of any of the depositories or that the affairs of any of the depositories are in an embarrassed financial condition, it shall be the duty of the board to direct the state treasurer to withdraw the money of the state from such depository. In case the board should be advised of the insolvency of the securities on the bond of any of the depositories, it shall be the duty of the state treasurer to notify the depository to strengthen the bond; and if, at the end of ten days, the bond is not strengthened, it shall be the duty of the board to direct the state treasurer to withdraw the money of the state from such depository. In either event, the board may also withdraw designation as a state depository. (Ga. L. 1882-83, p. 138, § 2; Civil Code 1895, § 987; Civil Code 1910, § 1254; Code 1933, § 100-106; Ga. L. 1949, p. 13, § 8; Ga. L. 1971, p. 553, § 5; Ga. L. 1973, p. 149, § 5; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" three times in this Code section.

50-17-56. State treasurer to make deposits in compliance with board's determinations.

The state treasurer shall deposit all state moneys in compliance with the determination of the board as to the maximum amount and proportion of deposits in particular depositories. (Ga. L. 1949, p. 13, § 6; Ga. L. 1973, p. 149, § 11; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" near the beginning of this Code section.

50-17-57. State treasurer to make reports.

The state treasurer, as administrative officer of the board, shall furnish to the Governor and the board such information and reports relating to funds held on demand accounts and as investments, estimates of treasury receipts and withdrawals, and interest earned on investments as may be necessary or helpful to the board in the administration of its duties. (Ga. L. 1960, p. 1144, § 5; Ga. L. 1973, p. 149, § 13; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director" near the beginning of this Code section.

50-17-59. Deposit of securities in lieu of bond.

(a) The state treasurer cannot have on deposit at any one time in any of the depositories for a time longer than ten days a sum of money belonging to the state under a contract with the depository providing for the payment of interest by a depository which has not given a bond to the state in the amount as determined by the board. The bond to be given by the state depositories, when such bonds are required and whether the depositories are state or national banks, shall be a surety bond in a sum as required signed by a surety company duly qualified and authorized to transact business within this state. In lieu of such a surety bond the state depository may deposit with the state treasurer to secure state funds on deposit in state depositories:

(1) Bonds, bills, certificates of indebtedness, notes, or other direct obligations of the United States or of this state;

(2) Bonds, bills, certificates of indebtedness, notes, or other obligations of the counties or municipalities of this state;

(3) Bonds of any public authority created by the laws of this state, if the statute creating such authority provides that the bonds of the authority may be used for this purpose and the bonds have been duly validated as provided by law, and as to which there has been no default in payment, either of principal or interest;

(4) Industrial revenue bonds or bonds of development authorities created by the laws of this state, which bonds have been duly validated as provided by law and as to which there has been no default in payment, either of principal or interest; or

(5) Bonds, bills, certificates of indebtedness, notes, or other obligations of a subsidiary corporation of the United States government, which are fully guaranteed by the United States government both as to principal and interest, or debt obligations issued by or securities guaranteed by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, the Central Bank for Cooperatives, the Farm Credit Banks, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association.

(b) The state treasurer may accept letters of credit issued by a Federal Home Loan Bank to secure state funds on deposit in state depositories.

(c) The state treasurer shall also accept the guarantee or insurance of accounts of the Federal Deposit Insurance Corporation to secure state funds on deposit in state depositories, to the extent authorized by federal law governing the Federal Deposit Insurance Corporation.

(d) Upon approval by the state treasurer, a state depository may secure deposits made with it in part by surety bond, in part by deposit

of any or all of the bonds mentioned in subsection (a) of this Code section, whether these bonds are owned by the depository or by another bank, and in part by letters of credit pursuant to subsection (b) of this Code section, or by any such method. The board may determine, however, that such security will be required only in the case of time deposits under a contract providing for the payment of interest.

(e) The state treasurer is authorized to contract with any bank, other than the state depository offering the security, for the purpose of safekeeping the securities deposited with the state treasurer under this provision. (Ga. L. 1893, p. 135, § 1; Civil Code 1895, § 989; Civil Code 1910, § 1256; Ga. L. 1931, p. 120, § 1; Code 1933, § 100-108; Ga. L. 1935, p. 106, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 483, § 1; Ga. L. 1968, p. 485, § 1; Ga. L. 1970, p. 467, § 1; Ga. L. 1971, p. 553, § 6; Ga. L. 1973, p. 149, § 6; Ga. L. 1975, p. 917, § 1; Ga. L. 1976, p. 769, § 1; Ga. L. 1979, p. 399, § 1; Ga. L. 1991, p. 94, § 50; Ga. L. 1993, p. 929, § 4; Ga. L. 1994, p. 499, § 2; Ga. L. 2007, p. 162, § 1/HB 96; Ga. L. 2010, p. 863, § 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director” throughout this Code section.

50-17-62. Funds to be held by depositories.

State depositories shall hold:

(1) All funds deposited with them as time deposits for and on account of the state in accordance with such time deposit agreements as from time to time may be entered into between the depositories and the board pursuant to Code Section 50-17-52, which agreements shall not be inconsistent with the statutes of the United States and regulations made pursuant thereto governing interest-bearing time deposits; and

(2) All other funds received by them for and on account of the state, subject to the check or order of the state treasurer or the officer or employee charged with the custody of any particular bank account. (Ga. L. 1878-79, p. 88, § 5; Code 1882, § 943e; Civil Code 1895, § 992; Civil Code 1910, § 1259; Code 1933, § 100-111; Ga. L. 1960, p. 1144, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 3, 4/SB 296.)

The 2010 amendment, effective July 1, 2010, in paragraph (2), substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” and “state treasurer” for “director” in the middle of paragraph (2).

Editor’s notes. — Ga. L. 2010, p. 863, § 4, purported to amend this Code section, but the amendment could not be implemented due to the earlier change by § 3 of that Act.

50-17-63. Deposit of demand funds; investment of funds; reports; remittance of interest earned; motor fuel tax revenues.

(a) All demand funds held by any department, board, bureau, or other agency of the state shall be deposited in state depositories, except the monthly deposits of funds for current operating expenses may be deposited in a foreign bank by any department, board, bureau, or other agency of the state which has a foreign office, provided that the department, board, bureau, or other agency of the state limits its operating deposits in foreign banks to conform to guidelines and dollar limitations prescribed by the State Depository Board; and such funds that are in excess of requirements for current operating expenses shall be placed under time deposit agreements by the state treasurer conforming to interest contracts then having approval of the board made pursuant to Code Section 50-17-52; and any funds not deposited or placed under time deposit agreements shall be subject to immediate withdrawal on order of the state treasurer when directed by the board. The board may permit any department, board, bureau, or other agency to invest funds collected directly by that department, board, bureau, or agency in short-term time deposit agreements, provided the interest income of those funds is remitted to the state treasurer as revenues of the state.

(b) All departments, boards, bureaus, and other agencies of the state shall report to the board, on such forms and at such times as the board may prescribe, such information as the board may reasonably require concerning deposits and withdrawals pursuant to this Code section and shall enable the board to determine compliance with this Code section. Interest earned on state funds withdrawn from the state treasury on approved budgets shall be remitted to the Office of the State Treasurer by each department, board, bureau, or agency and placed in the general fund. The board may permit the state treasurer to invest in any one or more of the following: bankers' acceptances; commercial paper; bonds, bills, certificates of indebtedness, notes, or other obligations of the United States and its subsidiary corporations and instrumentalities or entities sanctioned or authorized by the United States government including, but not limited to, obligations or securities issued or guaranteed by Banks for Cooperatives regulated by the Farm Credit Administration, the Commodity Credit Corporation, Farm Credit Banks regulated by the Farm Credit Administration, Federal Assets Financing Trusts, the Federal Financing Bank, Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Financial Assistance Corporation chartered by the Farm Credit Administration, the Government National Mortgage Association, the Import-Export Bank, Production

Credit Associations regulated by the Farm Credit Administration, the Resolution Trust Corporation, and the Tennessee Valley Authority; obligations of corporations organized under the laws of this state or any other state but only if the corporation has a market capitalization equivalent to \$100 million; provided, however, that such obligation shall be listed as investment grade by a nationally recognized rating agency; bonds, notes, warrants, and other securities not in default which are the direct obligations of the government of any foreign country which the International Monetary Fund lists as an industrialized country and for which the full faith and credit of such government has been pledged for the payment of principal and interest, provided that such securities are listed as investment grade by a nationally recognized rating agency; or obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the International Financial Corporation, provided that such securities are listed as investment grade by a nationally recognized rating agency; provided, however, that interest earned on the investment of motor fuel tax revenues shall be defined as motor fuel tax revenues and shall be appropriated in conformity with and pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia. The board may also permit the state treasurer to lend any of the securities of the type identified in this subsection subject to the limitations of subsection (b) of Code Section 50-5A-7 and this chapter. (Ga. L. 1960, p. 1144, § 4; Ga. L. 1973, p. 149, § 12; Ga. L. 1979, p. 399, § 2; Ga. L. 1983, p. 3, § 66; Ga. L. 1993, p. 1402, § 17; Ga. L. 1997, p. 569, § 3; Ga. L. 1997, p. 863, § 2; Ga. L. 2000, p. 1474, § 11; Ga. L. 2004, p. 319, § 3; Ga. L. 2004, p. 335, § 1; Ga. L. 2010, p. 863, §§ 2, 4/SB 296; Ga. L. 2011, p. 752, § 50/HB 142.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in the second sentence of subsection (b); and substituted “state treasurer” for “director” in three places in subsection (a) and two places in subsection (b).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “this chapter” for “Chapter 17 of this title” at the end of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Repurchase agreements. — Office of the State Treasurer is empowered to enter into repurchase agreements and reverse repurchase agreements in connection

with fulfilling its role related to managing the investment and liquidity needs of the state. 2012 Op. Att’y Gen. No. 12-1.

ARTICLE 5

INTEREST RATE MANAGEMENT

50-17-101. Guidelines, rules, and regulations for interest rate management plans and programs; state parties authorized to enter into, modify, or terminate interest rate management plans; disposition of payments under agreements; obligations, terms, and conditions; agency for state and oversight of the commission.

(a) The commission is authorized to and shall establish guidelines, rules, or regulations with respect to the procedures for approving interest rate management plans and with respect to any requirements for qualified interest rate management agreements. Such guidelines, rules, and regulations shall apply to the interest rate management plans and qualified interest rate management agreements of any state party. Such guidelines, rules, and regulations shall not constitute a rule within the meaning of Chapter 13 of this title, the “Georgia Administrative Procedure Act,” including, without limitation, the term “rule” as defined in paragraph (6) of Code Section 50-13-2 and used in Code Section 50-13-4.

(b) With respect to all or any portion of any debt or any lease or installment purchase contract, either issued or anticipated to be issued by the state party, the state party may enter into, terminate, amend, or otherwise modify a qualified interest rate management agreement under such terms and conditions as the state party may determine, including, without limitation, provisions permitting the state party to pay to or receive from any counterparty any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(c) Payments received by a state party pursuant to the terms of a qualified interest rate management agreement shall not be deposited into the state general fund but shall be subject to disposition by the state party and applied in accord with the goals of managing interest rate risk and interest cost as set forth in the qualified interest rate management agreement, any authorizing document for the debt or the lease or installment purchase contract to which such qualified interest rate management agreement relates, or such state party’s interest rate management plan.

(d)(1) With respect to any qualified interest rate management agreement related to all or any portion of debt of a state party, the obligations of the state party contained in such qualified interest rate management agreement may be incurred as related or additional obligations of such debt and approved in the same manner as

required for authorizing, approving, and issuing such debt to the extent not otherwise prohibited, limited, or impractical and consistent with any tax-exempt status of the related debt. If this power is exercised with respect to state debt, the obligations to pay a counterparty shall be subordinate to the obligations to pay holders of general obligation debt, guaranteed revenue debt, and all payments required under contracts entitled to the protection of the second paragraph of Paragraph I(a), Section VI, Article IX of the Constitution of 1976.

(2) When the obligations of the state party are not incurred as related or additional obligations pursuant to paragraph (1) of this subsection and the qualified interest rate management agreement relates to debt of a state authority, the qualified interest rate management agreement shall be on such terms and conditions as the state party and counterparty agree consistent with provisions of this article.

(3) When the obligations of the state party are not incurred as related or additional obligations pursuant to paragraph (1) of this subsection and the qualified interest rate management agreement relates to debt of the state or to a lease or installment purchase contract, the obligations of the state party contained in such qualified interest rate management agreement may renew from fiscal year to fiscal year and may provide for the payment of any fee related to a termination or a nonrenewal, so long as the following requirements are satisfied:

(A) Such qualified interest rate management agreement shall terminate absolutely at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

(B) Any renewal of such qualified interest rate management agreement shall require positive action taken by the state party or in such other manner not otherwise prohibited by law which method of renewal and termination, in either case, shall be specified in the qualified interest rate management agreement; and

(C) Such qualified interest rate management agreement shall include a statement of the total obligation of the state party for the fiscal year of execution and, if renewed, for the fiscal year of renewal.

A qualified interest rate management agreement meeting the requirements of this paragraph may also provide that the state's obligations will terminate immediately and absolutely at such time as appropriated and other funds encumbered for payment by the state pursuant to the terms of such qualified interest rate manage-

ment agreement are no longer available to satisfy such obligations. The total obligation of the state for the fiscal year payable pursuant to a qualified interest rate management agreement may be stated in contingent but objective terms with respect to variable rate payments or termination payments, but in that event a qualified interest rate management agreement must provide that it will terminate immediately and absolutely at such time as appropriated and other funds encumbered for its payment are no longer available to satisfy the obligations of the state under such agreement. A qualified interest rate management agreement executed under this paragraph shall not be deemed to create a debt of the state or otherwise obligate the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. When a qualified interest rate management agreement is executed under this paragraph or paragraph (1) of this subsection, the obligation of the state may be treated as an operating expense of the commission within the meaning of Paragraph VII of Section IV of Article VII of the Constitution and within the meaning of paragraph (2) of subsection (g) of Code Section 50-17-22 and of subsection (b) of Code Section 50-17-27.

(e)(1) The obligations of a state party to pay a counterparty under a qualified interest rate management agreement with respect to debt may be paid from any lawful source, to the extent not otherwise prohibited, limited, or impractical and consistent with any tax exempt status of the related debt and in compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," including without limitation, as to the state, proceeds of general obligation debt, earnings on investments of proceeds of general obligation debt, appropriations of state and federal funds, and agency funds; and, as to any state authority, any funds of such state authority to the extent not otherwise prohibited, limited, or impractical and consistent with any tax exempt status of the related debt.

(2) The obligations of a state party to pay a counterparty under a qualified interest rate management agreement with respect to a lease or installment purchase contract may be paid from any lawful source, to the extent not otherwise prohibited, limited, or impractical and consistent with any tax-exempt status of the related lease or installment purchase agreement and in compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," including without limitation appropriations of state and federal funds and agency funds.

(f)(1) With respect to obligations of a state authority to pay a counterparty, any qualified interest rate management agreement of a state authority may provide that it is an unconditional, limited

recourse obligation of such state authority payable from a specified revenue source.

(2) A state authority may, in any qualified interest rate management agreement that constitutes a limited recourse obligation of the state authority, pledge to the punctual payment of amounts due under the qualified interest rate management agreement revenues from a specified revenue source, which shall not include any taxes, including without limitation collateral derived from such revenue source or proceeds of the debt, including debt for future delivery, to which such qualified interest rate management agreement relates.

(3) A qualified interest rate management agreement that constitutes a limited recourse obligation shall not be payable from or charged upon any funds other than the revenue identified as the source of payment thereof, nor shall the state authority entering into the same be subject to any pecuniary liability thereon. No counterparty under any such qualified interest rate management agreement shall ever have the right to compel any exercise of the taxing power of the state or the state authority to pay any amount due under any such qualified interest rate management agreement, nor to enforce payment thereof against any property of the state or state authority, other than the specified revenue source; nor shall any such qualified interest rate management agreement constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state or state authority, other than the specified revenue source. Every such qualified interest rate management agreement shall contain a recital setting forth the substance of this paragraph.

(g)(1) The commission shall act for the state with respect to debt of the state and a qualified interest rate management agreement. However, upon authorization of the Governor, the Office of the State Treasurer shall act as fiscal agent or provide other administrative services.

(2) A state authority shall act for itself with respect to an interest rate management plan, a qualified interest rate management agreement, and an independent financial adviser regarding the debt of the state authority subject, however, to the guidelines, rules, and regulations of the commission under subsection (a) of this Code section. Further, the interest rate management plan, a qualified interest rate management agreement, and retention of an independent financial adviser will be treated as financial advisory matters within the exclusive authority and jurisdiction of the commission under paragraph (1) of subsection (f) of Code Section 50-17-22 and will require specific commission approval, unless the commission otherwise directs in either the specific case or in general terms. Upon authorization of the Governor, the Office of the State Treasurer shall act as

fiscal agent or provide other administrative services for a qualified interest rate management agreement of the state authority.

(3) The agency responsible for payment shall act for the state with respect to a lease or installment purchase contract but only under the supervision and approval of the commission. Upon authorization of the Governor, the Office of the State Treasurer shall act as fiscal agent or provide other administrative services. (Code 1981, § 50-17-101, enacted by Ga. L. 2005, p. 642, § 2/SB 227; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” throughout subsection (g).

CHAPTER 18

STATE PRINTING AND DOCUMENTS

Article 1		Sec.	
Information on State Stationery			denial of requests; impact of electronic records.
Sec.		50-18-71.1 and 50-18-71.2	[Repealed].
50-18-2.	Definitions; publications in printed or electronic format; preference.	50-18-72.	When public disclosure not required.
		50-18-73.	Jurisdiction to enforce article; attorney’s fees and litigation expenses; good faith reliance as defense to action.
		50-18-74.	Penalty for violations; procedure for commencement of prosecution.
		50-18-76.	Written matter exempt from disclosure under Code Section 31-10-25.
Article 2			
Court Reports			
50-18-20.	Definitions.		
50-18-26.	Content and appearance of reports; number of volumes per year.		
50-18-27.	Responsibilities of reporter; subject to dismissal if reports not published within six months of delivery.		
50-18-31.	Procedure for distribution of reports; discontinuance or resumption of distribution.		
50-18-37.	Accessibility.		
Article 4			
Inspection of Public Records			
50-18-70.	Legislative intent; definitions.	50-18-93.	Duties of division.
50-18-71.	Right of access; timing; fees;	50-18-98.	Title to records; access to records of constitutional officers.
		Article 5	
		State Records Management	
		Article 6	
		Microforms	
		50-18-120.	Authority for establishment of standards.

ARTICLE 1
INFORMATION ON STATE STATIONERY

50-18-2. Definitions; publications in printed or electronic format; preference.

(a) As used in this Code section, the term:

(1) "State agency" means any department, board, bureau, commission, authority, council, or committee or any other state agency or instrumentality of the executive or legislative branch of state government.

(2) "State officer" means any officer of the executive or legislative branch of state government.

(b) When any other provision of state law authorizes or directs any state officer or state agency to publish or provide for publication of any matter, such publication shall be made in electronic format unless the state officer or state agency determines that a printed format is necessary to achieve the purpose of publication, except that:

(1) When another provision of state law specifically provides for publication in one or more newspapers, publication shall be in the newspaper or newspapers as provided by such other provision of law; and

(2) When any other provision of state law makes specific reference to this Code section and requires publication in a specific manner notwithstanding the provisions of this Code section, such other provision of law shall control over this Code section.

(c) Nothing in this Code section shall limit the applicability of Article 4 of this chapter, relating to inspection of public records, when said article by its terms is otherwise applicable. (Code 1981, § 50-18-2, enacted by Ga. L. 2010, p. 838, § 4/SB 388.)

Effective date. — This Code section became effective June 3, 2010.

ARTICLE 2
COURT REPORTS

50-18-20. Definitions.

As used in this article, the term:

(1) "Publisher" means the state publisher of court reports who has been awarded the contract as defined in this article.

(2) “Reporter” means the reporter of the Supreme Court and Court of Appeals whose duties are set forth in Chapter 4 of Title 15.

(3) “Reports” means the official reports of the decisions of the Supreme Court or of the Court of Appeals, together with the usual title pages, indexes, etc., as well as the advance reports of the decisions of each court.

(4) “Rules compilation” means a compilation of rules applicable in the courts of this state. The rules compilation shall include the Rules of the Supreme Court, the Rules of the Court of Appeals, the Unified Appeal, the Uniform Transfer Rules, the Uniform Rules for the various classes of courts, the Rules of the Judicial Qualifications Commission, the Georgia Code of Judicial Conduct, the Bar Admissions Rules, the Rules and Regulations for the Organization and Government of the State Bar of Georgia, and any other rules or amendments as promulgated by the Supreme Court or the Court of Appeals, together with all applicable forms. (Ga. L. 1920, p. 237, § 2; Code 1933, § 90-201; Code 1933, § 90-201, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 1; Ga. L. 2010, p. 838, § 5/SB 388; Ga. L. 2011, p. 752, § 50/HB 142.)

The 2010 amendment, effective June 3, 2010, redesignated former paragraph (3) as present paragraphs (3) and (4); in paragraph (3), substituted a period for “and a volume” at the end; in paragraph (4), in the first sentence, added “‘Rules compilation’ means a compilation” at the beginning, in the last sentence, substituted “compilation” for “volume” and deleted “, title pages, indexes, etc.” at the end, and deleted the former last sentence,

which read: “The rules volume shall consist of a post binder which will be updated periodically.”

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, in the second sentence of paragraph (4), substituted “Georgia Code of Judicial Conduct” for “Code of Judicial Conduct” and deleted “the Rules for Sentence Review Panel,” preceding “the Rules and Regulations”.

50-18-26. Content and appearance of reports; number of volumes per year.

(a) The reports shall contain the decisions rendered in all cases presented to the Supreme Court of Georgia and to the Court of Appeals of Georgia and an index of all cases reported. No report shall contain any argument or brief of counsel beyond a statement of the major points and authorities.

(b) The reporter has the duty to ascertain that the reports are uniform in size and appearance. Whenever it becomes necessary, due to a variance in the number of decisions rendered, the reporter, in order to maintain the desired uniformity, may provide for the production of more than one volume from either court in any one year or may consolidate decisions of either court from two different years into one volume, but in no case shall the decisions of the Supreme Court be

combined in one volume with the decisions of the Court of Appeals. (Laws 1856, Cobb's 1851 Digest, p. 455; Code 1863, § 222; Code 1868, § 216; Code 1873, § 230; Code 1882, § 230; Ga. L. 1882-83, p. 76, § 11; Civil Code 1895, §§ 1088, 1092; Civil Code 1910, §§ 1357, 1361; Code 1933, §§ 90-208, 90-209; Code 1933, § 90-206, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 2; Ga. L. 2010, p. 838, § 6/SB 388.)

The 2010 amendment, effective June 3, 2010, in subsection (a), in the first sentence, deleted “, an index of all cases reported, the rules and forms described in paragraph (3) of Code Section 50-18-20,” preceding “and an index” and deleted “and

all rules reported” following “reported” from the end; and deleted “, with the exception of the rules volume,” preceding “are uniform” in the first sentence of subsection (b).

50-18-27. Responsibilities of reporter; subject to dismissal if reports not published within six months of delivery.

(a) The reporter shall furnish to the publisher the manuscript of the decisions, read the proof and correct the same, and furnish for each volume an index of the cases reported.

(b) If the reporter shall fail to publish the volumes of reports within six months of the time of the delivery to him of the last of the decisions to be included in a particular volume, he shall be subject to immediate dismissal unless good cause for such delay is shown to the satisfaction of a panel composed of three Justices of the Supreme Court appointed by the Chief Justice and two Judges of the Court of Appeals appointed by the Chief Judge. (Laws 1845, Cobb's 1851 Digest, p. 452; Code 1863, § 223; Code 1868, § 217; Code 1873, § 231; Code 1882, § 231; Civil Code 1895, § 1093; Civil Code 1910, § 1362; Ga. L. 1920, p. 237, § 6; Code 1933, §§ 90-210, 90-211; Code 1933, § 90-207, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 3; Ga. L. 2010, p. 838, § 7/SB 388.)

The 2010 amendment, effective June 3, 2010, deleted “rules, and forms,” preceding “read the proof” in subsection (a).

50-18-31. Procedure for distribution of reports; discontinuance or resumption of distribution.

The reporter shall make distribution of the reports which shall be handled in accordance with this Code section:

(1) The reporter shall place all orders for the reports with the publisher;

(2) All volumes distributed within this state to the state or to any of its subordinate departments, agencies, or political subdivisions, or to public officers or public employees within the state, shall be the

property of the appropriate public officer or employee during his or her term of office or employment and shall be turned over to his or her successor; and the reporter shall take and retain a receipt from each such public officer or employee acknowledging this fact. The reporter shall at all times use the most economical method of shipment consistent with the safety and security of the volumes; and

(3) The reporter shall make distributions of the reports in accordance with the following:

Archives, State	one copy
Court of Appeals of Georgia	23 copies
Executive Department	one copy
House Judiciary Committee	one copy
Law, Department of	six copies
Legislative Counsel	one copy
Judge of the Probate Court (each county)	one copy

Each probate court shall place a written order with the reporter on or before October 1. A written order from a probate court shall remain in effect until changed by a subsequent written order. The reporter shall not provide reports to any probate court without a written order.

Reporter

Assistant reporter's desk	one copy
Copyright	three copies
Reporter's clerical staff	one copy
Reporter's desk	one copy
Secretary of State	one copy
Senate Judiciary Committee	one copy

Superior Courts

District Attorneys (each)	one copy
Judges (each)	one copy

Each superior court judge shall place a written order with the reporter on or before October 1. A written order from a superior court judge shall remain in effect until changed by a subsequent written order.

The reporter shall not provide reports to any superior court judge court without a written order.

- Supreme Court of Georgia 18 copies
- University of Georgia Law School Library four copies
- Workers' Compensation, State Board of six copies

The reporter may add additional recipients or additional copies to named recipients upon written order from the Chief Justice of the Supreme Court. (Ga. L. 1920, p. 237, § 9; Code 1933, § 90-215; Code 1933, § 90-210, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1975, p. 741, § 5; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 702, §§ 1, 5; Ga. L. 1983, p. 3, § 39; Ga. L. 1986, p. 855, § 30; Ga. L. 1987, p. 3, § 50; Ga. L. 2008, p. 267, § 8/SB 482; Ga. L. 2010, p. 838, § 8/SB 388.)

The 2010 amendment, effective June 3, 2010, rewrote this Code section.

50-18-37. Accessibility.

The reporter shall publish a rules compilation in electronic format that is made accessible to the public through the Internet or other suitable electronic methods and shall update the rules compilation as necessary. (Code 1981, § 50-18-37, enacted by Ga. L. 2010, p. 838, § 9/SB 388.)

Effective date. — This Code section became effective June 3, 2010.

ARTICLE 4

INSPECTION OF PUBLIC RECORDS

Law reviews. — For article, “Must Government Contractors ‘Submit’ to Their Own Destruction?: Georgia’s Trade Secret Disclosure Exemption and United HealthCare of Georgia, Inc. v. Georgia Department of Community Health,” see 60 Mercer L. Rev. 825 (2009).

50-18-70. Legislative intent; definitions.

(a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to

allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.

(b) As used in this article, the term:

(1) “Agency” shall have the same meaning as in Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.

(2) “Public record” means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use. (Ga. L. 1959, p. 88, § 1; Code 1981, § 50-18-70; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 1; Ga. L. 1992, p. 1061, § 5; Ga. L. 1992, p. 1545, § 1; Ga. L. 1992, p. 2829, § 2; Ga. L. 1993, p. 1394, § 2; Ga. L. 1993, p. 1436, §§ 1, 2; Ga. L. 1994, p. 618, § 1; Ga. L. 1998, p. 128, § 50; Ga. L. 1999, p. 552, §§ 1, 2; Ga. L. 2012, p. 173, § 1-38/HB 665; Ga. L. 2012, p. 218, § 2/HB 397.)

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, in subsection (c), substituted “Except as provided in subsection (b) of Code Section 15-6-61, any” for “Any” at the beginning and inserted “or made available through electronic means” twice. The second 2012 amendment, effective April 17, 2012, rewrote this Code section. See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2012, the amendment of this Code section by Ga. L. 2012, p. 173, § 1-38/HB 665, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 218, § 2/HB 397, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

JUDICIAL DECISIONS

ANALYSIS

PUBLIC RECORDS
EXCEPTIONS

Public Records

Information obtained created public reports. — Because relators obtained their information under Freedom of Infor-

mation Act and Georgia Open Records Act, O.C.G.A. § 50-14-1 et seq., requests, the responses to the requests were “reports” under the False Claims Act’s public disclosure bar in 31 U.S.C. § 3730(e)(4)(A)

(amended), and thus publicly disclosed, so dismissal of their qui tam suit, alleging defendants, employees of a federal agency and a university and the university's research foundation, provided false information to obtain research funds, for lack of subject matter jurisdiction was proper. *United States v. Walker*, No. 10-14642, 2011 U.S. App. LEXIS 17929 (11th Cir. Aug. 26, 2011) (Unpublished).

E-mails sought not existing public record. — Trial court did not err in granting the Georgia Department of Agriculture summary judgment in a corporation's action seeking to compel the Department to comply with the corporation's request for records under the Georgia Open Records Act (GORA), O.C.G.A. § 50-18-70 et seq., because the Department provided the corporation with reasonable access to the information the corporation sought; because the information the corporation sought, e-mail correspondence, was not an

existing public record, non-disclosure thereof did not violate GORA, and the Department did not maintain the e-mails on the Department's system and would have to extract the e-mails from backup tapes using a laborious compilation process. *Griffin Indus. v. Ga. Dep't of Agric.*, 313 Ga. App. 69, 720 S.E.2d 212 (2011).

Exceptions

Personnel records of municipal employees not entitled to blanket exemption from the Georgia Open Records Act. — Former employee failed to show a violation of the employee's right to privacy by a city manager's release of the employee's personnel records because personnel records of municipal employees were not entitled to any blanket exemption from the Georgia Open Records Act, O.C.G.A. § 50-18-70. *Goddard v. City of Albany*, 285 Ga. 882, 684 S.E.2d 635 (2009).

RESEARCH REFERENCES

ALR. — Disclosure of electronic data under state public records and freedom of information acts, 54 ALR6th 653.

50-18-71. Right of access; timing; fees; denial of requests; impact of electronic records.

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter.

(b)(1)(A) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request; provided, however, that nothing in this chapter shall require agencies to produce records in response to a request if such records did not exist at the time of the request. In those instances where some, but not all, records are available within three business days, an agency shall make available within that period those records that can be located and produced. In any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for

when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.

(B) A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection. Notwithstanding any other provision of this chapter, an agency may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.

(2) Any agency that designates one or more open records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website. In the event an agency requires that requests be made upon the individuals identified in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by e-mail or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses e-mail or facsimile in the normal course of its business.

(3) The enforcement provisions of Code Sections 50-18-73 and 50-18-74 shall be available only to enforce compliance and punish noncompliance when a written request is made consistent with this subsection and shall not be available when such request is made orally.

(c)(1) An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the produc-

tion of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.

(2) In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to exceed 10¢ per page for letter or legal size documents or, in the case of other documents, the actual cost of producing the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.

(3) Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.

(d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested record or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days or in the event the search and retrieval of records is delayed pursuant to this paragraph or pursuant to subparagraph (b)(1)(A) of this Code section, then no later than three business days after the records have been retrieved. In any instance in which an agency will seek costs in excess of \$25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time not to exceed three business days and inform the requester of the estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. In any instance in which the estimated costs for production of the records exceeds \$500.00, an agency may

insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records. Whenever any person who has requested to inspect or copy a public record has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, an agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved.

(e) Requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced in response to the request to counsel of record for that agency unless the counsel of record for that agency elects not to receive the records.

(f) As provided in this subsection, an agency's use of electronic record-keeping systems must not erode the public's right of access to records under this article. Agencies shall produce electronic copies of or, if the requester prefers, printouts of electronic records or data from data base fields that the agency maintains using the computer programs that the agency has in its possession. An agency shall not refuse to produce such electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into an agency's computer system so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data, or data fields be produced in the format in which such data or electronic records are kept by the agency, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the agency's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media by the agency.

(g) Requests to inspect or copy electronic messages, whether in the form of e-mail, text message, or other format, should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific data bases to be searched for such messages.

(h) In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website

accessible by the public. However, if an agency receives a request for data fields, an agency shall not refuse to provide the responsive data on the grounds that the data is available in whole or in its constituent parts through a website if the requester seeks the data in the electronic format in which it is kept. Additionally, if an agency contracts with a private vendor to collect or maintain public records, the agency shall ensure that the arrangement does not limit public access to those records and that the vendor does not impede public record access and method of delivery as established by the agency or as otherwise provided for in this Code section.

(i) Any computerized index of county real estate deed records shall be printed for purposes of public inspection no less than every 30 days, and any correction made on such index shall be made a part of the printout and shall reflect the time and date that such index was corrected.

(j) No public officer or agency shall be required to prepare new reports, summaries, or compilations not in existence at the time of the request. (Ga. L. 1959, p. 88, § 2; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 2; Ga. L. 1992, p. 1061, § 6; Ga. L. 1996, p. 313, § 1; Ga. L. 2012, p. 218, § 2/HB 397.)

The 2012 amendment, effective April 17, 2012, rewrote this Code section.

50-18-71.1 and 50-18-71.2.

Repealed by Ga. L. 2012, p. 218, § 2/HB 397, effective April 17, 2012.

Editor's notes. — These Code sections 552, § 3; Ga. L. 2008, p. 829, § 3/HB were based on Ga. L. 1992, p. 1061, § 7; 1020.
Ga. L. 1996, p. 313, § 2; Ga. L. 1999, p.

50-18-72. When public disclosure not required.

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by federal statute or regulation to be kept confidential;

(2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;

(3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;

(4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution;

(5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

(A) Has a personal, professional, or business connection with a party to the accident;

(B) Owns or leases an interest in property allegedly or actually damaged in the accident;

(C) Was allegedly or actually injured by the accident;

(D) Was a witness to the accident;

(E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

(F) Is a prosecutor or a publicly employed law enforcement officer;

(G) Is alleged to be liable to another party as a result of the accident;

(H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;

(I) Is gathering information as a representative of a news media organization;

(J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this subparagraph shall apply only to accident reports on accidents that occurred more than 30 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted; or

(K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;

(6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by the Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, the Council of Superior Court Clerks of Georgia or the clerk of the county board of jury commissioners of any county shall provide data within the time limit established by the court for the limited purpose of such challenge. Neither the Council of Superior Court Clerks of Georgia nor the clerk of a county board of jury commissioners shall be liable for any use or misuse of such data;

(7) Records consisting of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee;

(8) Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;

(9) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned;

(10) Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;

(11) Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay final action on the position. The agency shall not be required to release such records of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

(12) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Budget and Research Office, provided that this exception shall not have any application to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;

(13) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions

on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;

(14) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

(15) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;

(16) Agricultural or food system records, data, or information that are considered by the Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "national animal identification program" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herd mates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(18) Records that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of

sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

(19) Records that reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;

(20)(A) Records that reveal an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility, television, Internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that the news media organization exception in this subparagraph shall not apply to paragraph (21) of this subsection.

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;

(ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;

(iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;

(iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;

(v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;

(vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;

(vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

(viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;

(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized

purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.

(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.

(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;

(21) Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. For the purposes of this paragraph, the term "public employee" means any officer, employee, or former employee of:

(A) The State of Georgia or its agencies, departments, or commissions;

(B) Any county or municipality or its agencies, departments, or commissions;

(C) Other political subdivisions of this state;

(D) Teachers in public and charter schools and nonpublic schools; or

(E) Early care and education programs administered through the Department of Early Care and Learning;

(22) Records of the Department of Early Care and Learning that contain the:

(A) Names of children and day and month of each child's birth;

(B) Names, addresses, telephone numbers, or e-mail addresses of parents, immediate family members, and emergency contact persons; or

(C) Names or other identifying information of individuals who report violations to the department;

(23) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;

(24) Records acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

(25)(A) Records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:

(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;

(ii) Any plan for protection against terrorist or other attacks that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;

(iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge;

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and

(v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (iv) of this subparagraph.

(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in division (i) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

(26) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (3) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point. Such information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

(27) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;

(28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any toll project;

(29) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such

donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of \$10,000.00 in the aggregate in a calendar year; and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

(30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, SmartCard, or successor or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;

(31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;

(32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies;

(33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127;

(34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited from doing so by an

appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

(35) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

(36) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This paragraph shall apply to, but shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;

(37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;

(38) Unless otherwise provided by law, records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration which is to be administered by an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education

may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics;

(39) Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;

(40) Any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms, except to the extent that such records relating to licensing and possession of firearms are sought by law enforcement agencies as provided by law;

(41) Records containing communications subject to the attorney-client privilege recognized by state law; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege. Attorney-client communications, however, may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which such proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(42) Confidential attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply

to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(43) Records containing tax matters or tax information that is confidential under state or federal law;

(44) Records consisting of any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated, kept, or received by an agency shall be subject to inspection and copying as provided in this article;

(45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;

(46) Documents maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term "economic development project" means a plan or

proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business;

(47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business; or

(48) Records that are expressly exempt from public inspection pursuant to Code Section 47-20-87.

(b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

(c)(1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case.

(2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:

- (A) A photograph;
- (B) A photocopy;
- (C) A facsimile; or
- (D) Another reproduction.

(3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.

(d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence,

the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000.00, or both. (Ga. L. 1967, p. 455, § 1; Ga. L. 1970, p. 163, § 1; Code 1981, § 50-18-72, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1986, p. 1090, § 2; Ga. L. 1987, p. 377, § 1; Ga. L. 1988, p. 13, § 50; Ga. L. 1988, p. 243, § 3; Ga. L. 1989, p. 553, § 2; Ga. L. 1989, p. 827, § 1; Ga. L. 1990, p. 341, § 1; Ga. L. 1992, p. 1061, § 8; Ga. L. 1993, p. 968, § 1; Ga. L. 1993, p. 1336, § 1; Ga. L. 1993, p. 1669, § 1; Ga. L. 1995, p. 704, § 1; Ga. L. 1996, p. 6, § 50; Ga. L. 1997, p. 1052, § 2; Ga. L. 1998, p. 1652, § 1; Ga. L. 1999, p. 552, §§ 4, 4.1; Ga. L. 1999, p. 809, §§ 4, 5; Ga. L. 1999, p. 1222, §§ 1, 2; Ga. L. 2000, p. 136, § 50; Ga. L. 2000, p. 1556, §§ 1, 2; Ga. L. 2001, p. 4, § 50; Ga. L. 2001, p. 327, § 1; Ga. L. 2001, p. 331, § 1; Ga. L. 2001, p. 491, § 1; Ga. L. 2001, p. 820, § 13; Ga. L. 2002, p. 415, § 50; Ga. L. 2003, p. 602, § 1; Ga. L. 2003, p. 880, § 2; Ga. L. 2004, p. 107, § 22; Ga. L. 2004, p. 161, § 15; Ga. L. 2004, p. 341, § 1A; Ga. L. 2004, p. 410, § 9; Ga. L. 2004, p. 770, § 1; Ga. L. 2005, p. 334, § 30-2/HB 501; Ga. L. 2005, p. 558, § 1/HB 437; Ga. L. 2005, p. 595, § 1/SB 121; Ga. L. 2005, p. 660, § 11/HB 470; Ga. L. 2005, p. 1133, § 1/HB 340; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2006, p. 536, § 1/HB 955; Ga. L. 2007, p. 87, § 1/SB 212; Ga. L. 2007, p. 160, § 1/HB 101; Ga. L. 2008, p. 564, § 2/SB 33; Ga. L. 2008, p. 829, § 4/HB 1020; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 37, §§ 1, 1.1, 1.2/SB 26; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 698, § 7/HB 126; Ga. L. 2010, p. 243, §§ 1, 2/HB 1086; Ga. L. 2010, p. 286, § 23/SB 244; Ga. L. 2010, p. 415, § 2/HB 249; Ga. L. 2010, p. 963, § 2-21/SB 308; Ga. L. 2011, p. 59, §§ 3-1, 1-68/HB 415; Ga. L. 2011, p. 611, § 1/HB 261; Ga. L. 2011, p. 705, § 5-29/HB 214; Ga. L. 2012, p. 211, § 4/SB 402; Ga. L. 2012, p. 218, § 2/HB 397; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, in paragraph (a)(13.1), inserted “the e-mail address,” near the beginning of the first sentence and added the last sentence; and, in subsection (b), inserted a comma in paragraphs (b)(1) and (b)(2), and inserted “the Professional Standards Commission,” in the middle of paragraph (b)(3). The second 2010 amendment, effective July 1, 2010, inserted “, the Department of Behavioral Health and Developmental Disabilities,” in the middle of the first sentence of paragraph (c)(2). The

third 2010 amendment, effective July 1, 2010, deleted “or” at the end of paragraph (a)(21); substituted “; or” for a period at the end of paragraph (a)(22); and added paragraph (a)(23). The fourth 2010 amendment, effective June 4, 2010, substituted “weapons carry licenses” for “licenses to carry pistols or revolvers” in the middle of the first sentence of subsection (d). See the editor’s note for applicability.

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, added paragraph (a)(4.2); and, effective May 3, 2011, in subparagraph (a)(15)(A),

deleted “and” at the end of division (a)(15)(A)(iii), substituted “; and” for a period at the end of division (a)(15)(A)(iv), and added division (a)(15)(A)(v). The second 2011 amendment, effective July 1, 2011, in subparagraph (a)(15)(A), deleted “and” at the end of division (a)(15)(A)(iii), substituted “; and” for a period at the end of division (a)(15)(A)(iv), and added division (a)(15)(A)(v). The third 2011 amendment, effective July 1, 2011, inserted “the Department of Public Health,” in the first sentence of paragraph (c)(2). See editor’s note for applicability.

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, deleted “or” at the end of paragraph (a)(22), substituted “; or” for the period at the end of paragraph (a)(23), and added paragraph (a)(24) (now paragraph (a)(48)). The second 2012 amendment, effective April 17, 2012, rewrote this Code section. See editor’s note for applicability. The third 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “upon any toll” for “upon such toll” in paragraph (a)(18) (now paragraph (a)(28)).

Code Commission notes. — Pursuant to Code Section § 28-9-5, in 2012, “or” was deleted at the end of paragraph (a)(46), “; or” was substituted for a period at the end of paragraph (a)(47), and paragraph (a)(24) as added by Ga. L. 2012, p. 211, § 1/SB 402 was redesignated as paragraph (a)(48).

Editor’s notes. — Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

Ga. L. 2011, p. 59, § 1-1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Jury Composition Reform Act of 2011.’”

Ga. L. 2011, p. 59, § 4-1(b), not codified by the General Assembly, provides that the amendment to this Code section by that Act shall apply to open records requests pending on May 3, 2011, or made on and after May 3, 2011.

Ga. L. 2012, p. 211, § 1/SB 402, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Employees’ Retirement System of Georgia Enhanced Investment Authority Act.’”

Ga. L. 2012, p. 218, § 18/HB 397, not codified by the General Assembly, provides, in part, that “the provisions of paragraph (47) of subsection (a) of Code Section 50-18-72 as enacted by this Act shall apply to any request for public records made prior to the effective date of this Act. Agencies shall be permitted to assert the provisions of paragraph (47) of subsection (a) of Code Section 50-18-72 as enacted by this Act as a basis for withholding documents covered by that paragraph in any pending or subsequently filed litigation regarding a request that occurred prior to the effective date of this Act.” This Act became effective April 17, 2012.

Law reviews. — For article, “Must Government Contractors ‘Submit’ to Their Own Destruction?: Georgia’s Trade Secret Disclosure Exemption and United HealthCare of Georgia, Inc. v. Georgia Department of Community Health,” see 60 Mercer L. Rev. 825 (2009). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

Law enforcement personnel. — When a complaint was delivered to a sheriff’s captain who delivered the complaint to the deputy named as a defendant in the complaint, service upon the deputy

was insufficient since the prohibition against disclosure of the home address of a law enforcement officer under O.C.G.A. § 50-18-72 did not validate the delivery to the captain as service under O.C.G.A. § 9-11-4(e)(7). *Melton v. Wiley*, No.

07-10959, 2008 U.S. App. LEXIS 1069 (11th Cir. Jan. 15, 2008) (Unpublished).

Trade secrets.

Bidder on a public project failed to provide any evidence to support the bidder's claim that the detailed pricing information in the bidder's unredacted price proposal would enable a competitor to deduce how

the bidder designed the bidder's systems and, therefore, merited protection under the trade secrets exemption to the Open Records Act, O.C.G.A. § 50-18-72(b)(1). *State Rd. & Tollway Auth. v. Elec. Transaction Consultants Corp.*, 306 Ga. App. 487, 702 S.E.2d 486 (2010).

RESEARCH REFERENCES

ALR. — Disclosure of electronic data under state public records and freedom of information acts, 54 ALR6th 653.

50-18-73. Jurisdiction to enforce article; attorney's fees and litigation expenses; good faith reliance as defense to action.

(a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of such decision. (Code 1981, § 50-18-73, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 4; Ga. L. 1992, p. 1061, § 9; Ga. L. 1998, p. 595, § 2; Ga. L. 2012, p. 218, § 2/HB 397.)

The 2012 amendment, effective April 17, 2012, in the third sentence of subsection (a), deleted “, either civil or criminal,” following “bring such actions” near the middle, and added “and to seek either civil

or criminal penalties or both” at the end; and substituted “account of such decision” for “account of having provided access to such information” at the end of subsection (c).

JUDICIAL DECISIONS

E-mails sought not existing public record. — Trial court did not err in granting the Georgia Department of Agriculture summary judgment in a corporation's action seeking to compel the Department to comply with the corporation's request for records under the Georgia Open Records Act (GORA), O.C.G.A. § 50-18-70 et seq., because the Department provided the corporation with reasonable access to the information the corporation sought;

because the information the corporation sought, e-mail correspondence, was not an existing public record, non-disclosure thereof did not violate GORA, and the Department did not maintain the e-mails on the Department's system and would have to extract the e-mails from backup tapes using a laborious compilation process. *Griffin Indus. v. Ga. Dep't of Agric.*, 313 Ga. App. 69, 720 S.E.2d 212 (2011).

50-18-74. Penalty for violations; procedure for commencement of prosecution.

(a) Any person or entity knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, by knowingly and willingly failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. In addition, persons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.

(b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40; such citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance. (Code 1981, § 50-18-74, enacted by Ga. L. 1999, p. 552, § 5; Ga. L. 2012, p. 218, § 2/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted the present provisions of subsection (a) for the former provisions, which read: "Any person know-

ingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article or by failing or refusing to provide access to such records within the time limits set forth in this

article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.00.”; and substituted “Code Section 17-4-40; such” for “Code Section 17-4-40, which” in the first sentence of subsection (b).

50-18-75. Confidentiality of communications between Office of Legislative Counsel and certain persons.

Editor’s notes. — Ga. L. 2012, p. 218, § 2/HB 397, effective April 17, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

50-18-76. Written matter exempt from disclosure under Code Section 31-10-25.

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Public Health shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection. (Code 1981, § 50-18-76, enacted by Ga. L. 1991, p. 1943, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 218, § 2/HB 397.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” near the end of this Code section.

Editor’s notes. — Ga. L. 2012, p. 218, § 2/HB 397, effective April 17, 2012, reenacted this Code section without change.

50-18-77. Inapplicable to public records.

Editor’s notes. — Ga. L. 2012, p. 218, § 2/HB 397, effective April 17, 2012, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

ARTICLE 5

STATE RECORDS MANAGEMENT

50-18-90. Short title.

JUDICIAL DECISIONS

Cited in *Griffin Indus. v. Ga. Dep't of Agric.*, 313 Ga. App. 69, 720 S.E.2d 212 (2011).

50-18-93. Duties of division.

It shall be the duty of the division to:

(1) Establish and administer, under the direction of a state records management officer, who shall be employed under the rules and regulations of the State Personnel Board, a records management program;

(2) Develop and issue procedures, rules, and regulations establishing standards for efficient and economical management methods relating to the creation, maintenance, utilization, retention, preservation, and disposition of records, filing equipment, supplies, micro-filming of records, and vital records programs;

(3) Assist state agencies in implementing records programs by providing consultative services in records management, conducting surveys in order to recommend more efficient records management practices, and providing training for records management personnel; and

(4) Operate a records center or centers which shall accept all records transferred to it through the operation of approved retention schedules, provide secure storage and reference service for the same, and submit written notice to the applicable agency of intended destruction of records in accordance with approved retention schedules. (Ga. L. 1972, p. 1267, § 4; Ga. L. 1975, p. 675, § 3; Ga. L. 2002, p. 532, § 25; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-108/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" in paragraph (1).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions

which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

50-18-96. (Repealed effective January 1, 2013) Copies of records as primary evidence.

Editor’s notes. — Ga. L. 2011, p. 99, § 95, provides for the repeal of this Code section effective January 1, 2013. For provisions of this Code section effective until that date, see the bound volume.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011).

50-18-98. Title to records; access to records of constitutional officers.

(a) Title to any record transferred to the Georgia State Archives as authorized by this article shall be vested in the division. The division shall not destroy any record transferred to it by an agency without consulting with the proper official of the transferring agency prior to submitting a retention schedule requesting such destruction to the State Records Committee. Access to records of constitutional officers shall be at the discretion of the constitutional officer who created, received, or maintained the records, but no limitation on access to such records shall extend more than 25 years after creation of the records. As used in this Code section, the term “constitutional officer” means the Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor.

(b) Title to any record transferred to the records center shall remain in the agency transferring such record to the records center. (Ga. L. 1972, p. 1267, § 10; Ga. L. 1973, p. 691, § 3; Ga. L. 1975, p. 675, § 8; Ga. L. 2002, p. 532, § 29; Ga. L. 2012, p. 173, § 1-39/HB 665.)

The 2012 amendment, effective July 1, 2012, added the last sentence in subsection (a).

ARTICLE 6

MICROFORMS

50-18-120. Authority for establishment of standards.

The authority for the establishment of microform standards shall be vested in the State Records Committee. All powers and duties of the State Records Committee as provided in Article 5 of this chapter shall be applicable to the establishment and maintenance of microform

standards in this state. With respect to microform standards for the courts, the concurrence of The Council of Superior Court Clerks of Georgia and the Judicial Council of Georgia shall be required for the establishment of such standards. (Code 1981, § 50-18-120, enacted by Ga. L. 1986, p. 1154, § 1; Ga. L. 2012, p. 173, § 1-40/HB 665.)

The 2012 amendment, effective July 1, 2012, substituted “The Council of Superior Court Clerks of Georgia and the Judicial Council of Georgia” for “the Administrative Office of the Courts” in the middle of the last sentence.

CHAPTER 20

RELATIONS WITH NONPROFIT CONTRACTORS

Sec.

50-20-8. Applicability.

50-20-8. Applicability.

(a) Except as provided in paragraphs (1) through (3) of subsection (b) and paragraphs (1) and (2) of subsection (c) of this Code section, all contracts between a nonprofit organization and a state organization shall be subject to this chapter.

(b) This chapter shall not apply to:

(1) Procurement contracts used to buy goods or services from vendors;

(2) Individual employment contracts; and

(3) Benefit payments or other related payments made by state organizations to a nonprofit organization on behalf of individuals for health care or other services.

(c) The provisions of subsection (b) of Code Section 50-20-3 shall not apply to the following:

(1) Nonprofit organizations affiliated with the University System of Georgia which are organized or operated primarily for the purpose of serving, soliciting, receiving, and investing gifts and donations in the name of the board of regents or individual units of the University System of Georgia or related programs and which expend less than \$25,000.00 in state awards;

(2) Nonprofit organizations affiliated with the State Board of the Technical College System of Georgia or with postsecondary technical schools operated under the state level management and operational

control of the State Board of the Technical College System of Georgia which organizations are operated primarily for the purpose of serving, soliciting, receiving, and investing gifts and donations for the board, such schools, or related programs and which expend less than \$25,000.00 in state awards; and

(3) Nonprofit organizations which expend less than \$25,000.00 in state awards. (Code 1981, § 50-20-8, enacted by Ga. L. 1998, p. 237, § 1; Ga. L. 2011, p. 632, § 3/HB 49.)

The 2011 amendment, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” twice in paragraph (c)(2).

CHAPTER 21

WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS
EX CONTRACTU; STATE TORT CLAIMS

Article 2
State Tort Claims

Claims Trust Fund; premiums and deductibles; incentive programs authorized; merger of preexisting programs and funds; additional coverages.

Sec.
50-21-33. Liability insurance or self-insurance programs; State Tort

ARTICLE 1

WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS EX
CONTRACTU

50-21-1. Waiver of sovereign immunity as to actions ex contractu for breach of written contract to which state is party; venue.

Law reviews. — For article, “Administrative Law,” see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

No waiver of immunity in federal court. — Because Georgia did not waive the states’ Eleventh Amendment immunity, the federal district court lacked juris-

diction to decide the student’s breach of contract claim against the board of regents. *Barnes v. Zaccari*, 669 F.3d 1295 (11th Cir. 2012).

ARTICLE 2

STATE TORT CLAIMS

Law reviews. — For comment, “Abrogating Sovereign Immunity Pursuant to its Bankruptcy Clause Power: Congress

Went Too Far!,” see 13 Bank. Dev. J. 197 (1996).

50-21-20. Short title.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Medicaid status irrelevant to constitutionality. — Grant of official immunity from a malpractice suit to a state-employed doctor based on the patient’s status as a Medicaid patient did not violate the constitutional rights of the patient’s parents, as the due process and equal protection clauses of the U.S. and Georgia Constitutions protected only rights, and a waiver of sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was merely a privilege. *Porter v. Guill*, 298 Ga. App. 782, 681 S.E.2d 230 (2009).

Georgia Lottery Corporation. — Georgia Lottery Corporation (GLC) is entitled to assert sovereign immunity as a

bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of the GLC are indelibly intertwined with the state in a manner that qualifies the GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. *Kyle v. Ga. Lottery Corp.*, 290 Ga. 87, 718 S.E.2d 801 (2011).

Cited in *Sadler v. DOT*, 311 Ga. App. 601, 716 S.E.2d 639 (2011).

50-21-21. Legislative intent.

JUDICIAL DECISIONS

Immunity for university officials. — Georgia Tort Claims Act barred a state university professor’s tortious interference claim against the university and its officials because the individual defendants were immune under O.C.G.A. § 50-21-21(b), and, under O.C.G.A.

§ 50-21-24(7), the state had no liability for losses resulting from interference with contractual rights. *Edmonds v. Bd. of Regents*, 302 Ga. App. 1, 689 S.E.2d 352 (2009), cert. denied, No. S10C0824, 2010 Ga. LEXIS 437 (Ga. 2010).

50-21-22. Definitions.

JUDICIAL DECISIONS

Discretionary functions. Georgia Department of Human Resources and the DeKalb Community Ser-

vice Board were not entitled to summary judgment based on immunity in a foster child’s parents’ action against them arising

ing out of the child's being hit by a car while in foster care. The foster parents' decision to leave the child was not a discretionary function under O.C.G.A. §§ 50-21-22(2) and 50-21-24(2); decisions about the child's care did not involve policy judgments based on social, political, or even economic factors. *Ga. Dep't of Human Res. v. Bulbalia*, 303 Ga. App. 659, 694 S.E.2d 115 (2010).

Inspection for road hazards was not discretionary function. — The Georgia Department of Transportation's decision of when and where to inspect for road hazards during and following a rain event was not a policy decision requiring the exercise of discretion within the scope of O.C.G.A. § 50-21-24(2), although it involved a "judgment call" by DOT employees, and therefore the DOT did not have immunity from a suit stemming from a driver's hydroplaning in water on the road and drowning in a pond caused by a backed up storm drain. *Ga. DOT v. Miller*, 300 Ga. App. 857, 686 S.E.2d 455 (2009).

No discretionary function exception found.

Trial court did not err in denying motions to dismiss co-executors' wrongful death claims against the Georgia Department of Transportation (DOT) because the DOT employees' operational inspections of the roadways, and the DOT's concomitant decisions as to whether or not to inspect and remove hazardous trees, did not constitute basic governmental policy decisions within the scope of the discretionary function exception to the waiver of immunity found in the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2). *Ga. DOT v. Smith*, 314 Ga. App. 412, 724 S.E.2d 430 (2012).

"State officer or employee."

College and a department were entitled to sovereign immunity in a claim seeking damages arising from the purchase of a nail primer product at the college because there was no showing of a waiver of a sovereign immunity under O.C.G.A. § 50-21-23(a); among other things, the vendor of the product was an independent contractor, and thus was not a state officer or employee under O.C.G.A. § 50-21-22(7). The instructors of the college, who neither sold nor manufactured the nail kit contain-

ing the nail primer, assumed no duty to provide warnings, the complaint included no allegations of negligent supervision, claims that the college instructors were negligent in the instructor's own right were barred by contrary binding admissions in *judicio*, and without evidence that the college instructors retained control over the vendor's work, there was no claim that the instructors had or breached a duty to supervise. *Coosa Valley Tech. College v. West*, 299 Ga. App. 171, 682 S.E.2d 187 (2009), cert. denied, No. S09C1954, 2010 Ga. LEXIS 9 (Ga. 2010).

Court of appeals erred by reversing the trial court's denial of a community service board's motion to dismiss a parent's wrongful death action, which alleged that the board was liable for health care workers' negligent acts, because borrowed servants were included within the definition of an "employee" for purposes of the Georgia Tort Claims Act, O.C.G.A. § 50-21-22(7); encompassed within the waiver of immunity under the Act, O.C.G.A. § 50-21-23(a), for all state employees acting within the scope of their official duties is a concomitant specific waiver of immunity for torts committed by borrowed servants acting within the scope of their official duties on behalf of the state because by electing not to include a separate definition of the term "employee" within the Act, the General Assembly intended courts to apply the legal definition of that term as developed under common law and existing jurisprudence. *Summerlin v. Ga. Pines Cmty. Serv. Bd.*, 286 Ga. 593, 690 S.E.2d 401 (2010).

Court of appeals erred by reversing the trial court's denial of a community service board's motion to dismiss a mother's wrongful death action, which alleged that it was liable for health care workers' negligent acts, because the court of appeals erred in failing to give any weight to the legal principles regarding borrowed servants and the definition attributed to the term "employee" for purposes of the workers' compensation statute; the fact that borrowed servants have been included within the definition of an "employee" in other legal areas is proof of how ingrained the borrowed servant doctrine is in our jurisprudence. *Summerlin v. Ga. Pines*

Cnty. Serv. Bd., 286 Ga. 593, 690 S.E.2d 401 (2010).

County that housed state inmates in the county's prison under O.C.G.A. § 42-5-53 functioned as an independent contractor for which the state did not waive sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and the county employees who were allegedly negligent in their handling of an inmate did not fall within the GTCA's definition of state officer or employee, O.C.G.A. § 50-21-22(7); therefore, the State Department of Corrections was entitled to be dismissed from the inmate's suit based on sovereign immunity. *Ga. Dep't of Corr. v. James*, 312 Ga. App. 190, 718 S.E.2d 55 (2011).

Georgia Lottery Corporation. — Georgia Lottery Corporation (GLC) is en-

titled to assert sovereign immunity as a bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of GLC are indelibly intertwined with the state in a manner that qualifies the GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. *Kyle v. Ga. Lottery Corp.*, 290 Ga. 87, 718 S.E.2d 801 (2011).

Cited in *Kyle v. Ga. Lottery Corp.*, 304 Ga. App. 635, 698 S.E.2d 12 (2010).

50-21-23. Limited waiver of sovereign immunity.

JUDICIAL DECISIONS

"State officer or employee."

Court of appeals erred by reversing the trial court's denial of a community service board's motion to dismiss a parent's wrongful death action, which alleged that the board was liable for health care workers' negligent acts, because borrowed servants were included within the definition of an "employee" for purposes of the Georgia Tort Claims Act, O.C.G.A. § 50-21-22(7); encompassed within the waiver of immunity under the Act, O.C.G.A. § 50-21-23(a), for all state employees acting within the scope of their official duties is a concomitant specific waiver of immunity for torts committed by borrowed servants acting within the scope of their official duties on behalf of the State because by electing not to include a separate definition of the term "employee" within the Act, the General Assembly intended courts to apply the legal definition of that term as developed under common law and existing jurisprudence. *Summerlin v. Ga. Pines Cnty. Serv. Bd.*, 286 Ga. 593, 690 S.E.2d 401 (2010).

Georgia Department Of Transportation. — Court of appeals declined to impose a higher standard of care on the Georgia Department of Transportation (DOT) in a co-executors' wrongful death

actions alleging that the DOT was negligent in failing to inspect a tree and in failing to remove the tree before the tree fell on their parents' car because the waiver of sovereign immunity found in the Georgia Tort Claims Act, O.C.G.A. § 50-21-23(a), provided that the state would be liable for torts in the same manner as a private individual or entity would be liable under like circumstances. *Ga. DOT v. Smith*, 314 Ga. App. 412, 724 S.E.2d 430 (2012).

Limited waiver of sovereign immunity.

Georgia law waives sovereign immunity for tort suits against state officers and employees committed in the scope of employment under O.C.G.A. § 50-21-23, while a later statute, O.C.G.A. § 50-21-25, states that the procedure established under the Georgia Tort Claims Act provides the exclusive remedy for any tort committed by a state officer or employee, O.C.G.A. § 50-21-25(a). *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents*, 633 F.3d 1297 (11th Cir. 2011).

No waiver of immunity.

In a case brought pursuant to 42 U.S.C. §§ 1981, 1983, 1986, and 1988, dismissal under Fed. R. Civ. P. 12(b)(6) of an indi-

vidual's federal claims as barred by Eleventh Amendment immunity and the state tort claims as barred by both sovereign immunity and the Eleventh Amendment was affirmed. O.C.G.A. § 50-21-23(b) specifically preserved the State of Georgia's sovereign immunity from suits in federal courts, and Congress had not abrogated the states' Eleventh Amendment immunity with the passage of 42 U.S.C. § 1983. *Alyshah v. Georgia*, 2007 U.S. App. LEXIS 8357 (11th Cir. Apr. 11, 2007) (Unpublished).

College and a department were entitled to sovereign immunity in a claim seeking damages arising from the purchase of a nail primer product at the college because there was no showing of a waiver of a sovereign immunity under O.C.G.A. § 50-21-23(a); among other things, the vendor of the product was an independent contractor, and thus was not a state officer or employee under O.C.G.A. § 50-21-22(7). The instructors of the college, who neither sold nor manufactured the nail kit containing the nail primer, assumed no duty to provide warnings, the complaint included no allegations of negligent supervision, claims that the college instructors were negligent in the instructor's own right were barred by contrary binding admissions in *judicio*, and without evidence that the college instructors retained control over the vendor's work, there was no claim that the instructors had or breached a duty to supervise. *Coosa Valley Tech. College v. West*, 299 Ga. App. 171, 682 S.E.2d 187 (2009), cert. denied, No. S09C1954, 2010 Ga. LEXIS 9 (Ga. 2010).

Trial court did not err in disallowing a prison inmate to file a conversion claim against a warden and corrections officers under the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., because their actions were clothed with offi-

cial immunity under the GTCA, O.C.G.A. § 50-21-25(b), since they were acting within the scope of their official duties when they confiscated the inmate's personal property; the inmate acknowledged that the Georgia Department of Corrections had to be named as a defendant, which necessarily amounted to a concession that Department employees were not proper defendants, and their alleged tortious conduct occurred while they were acting within the scope of their official duties. *Romano v. Ga. Dep't of Corr.*, 303 Ga. App. 347, 693 S.E.2d 521 (2010).

County that housed state inmates in the county's prison under O.C.G.A. § 42-5-53 functioned as an independent contractor for which the state did not waive sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and the county employees who were allegedly negligent in their handling of an inmate did not fall within the GTCA's definition of state officer or employee, O.C.G.A. § 50-21-22(7); therefore, the State Department of Corrections was entitled to be dismissed from the inmate's suit based on sovereign immunity. *Ga. Dep't of Corr. v. James*, 312 Ga. App. 190, 718 S.E.2d 55 (2011).

Trial court did not err in denying motions to dismiss co-executors' wrongful death claims against the Georgia Department of Transportation (DOT) because the DOT employees' operational inspections of the roadways, and the DOT's concomitant decisions as to whether or not to inspect and remove hazardous trees, did not constitute basic governmental policy decisions within the scope of the discretionary function exception to the waiver of immunity found in the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2). *Ga. DOT v. Smith*, 314 Ga. App. 412, 724 S.E.2d 430 (2012).

50-21-24. Exceptions to state liability.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION DISCRETIONARY FUNCTIONS APPLICATION

1. DEPARTMENT OF TRANSPORTATION

4. OTHERS

General Consideration

Cited in *Romano v. Ga. Dep't of Corr.*, 303 Ga. App. 347, 693 S.E.2d 521 (2010).

Discretionary Functions**Acts of foster parents.**

Georgia Department of Human Resources and the DeKalb Community Service Board were not entitled to summary judgment based on immunity in a foster child's parents' action against them arising out of the child's being hit by a car while in foster care. The foster parents' decision to leave the child was not a discretionary function under O.C.G.A. §§ 50-21-22(2) and 50-21-24(2); decisions about the child's care did not involve policy judgments based on social, political, or even economic factors. *Ga. Dep't of Human Res. v. Bulbalia*, 303 Ga. App. 659, 694 S.E.2d 115 (2010).

Application**1. Department of Transportation****Highway design exception.**

Trial court did not err in granting the Georgia Department of Transportation (DOT) summary judgment in a driver's action alleging that the DOT's failure to properly design an intersection and to replace a sign was the proximate cause of the driver's injuries because the DOT was entitled to summary judgment on the basis that the driver's claims were barred by the doctrine of sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(10); because the generally accepted standards did not require the DOT to post the sign, the DOT's failure to replace the sign later could not constitute a deviation from the same standards, and the affidavit of the driver's expert did not state that the design of the intersection failed to substantially comply with generally accepted engineering or design standards in any other manner that caused or contributed to the driver's injuries. *O'Hara v. Ga. DOT*, No. A07A0996, 2007 Ga. App. LEXIS 1338 (Nov. 20, 2007).

Permitting exception. — Sovereign immunity barred a negligence action

against the Georgia Department of Transportation (GDOT), pursuant to the permitting exception in O.C.G.A. § 50-21-24(9), because there was no evidence that the intersection at which an automobile accident occurred warranted a signal and the GDOT had no duty to upgrade the intersection. *Sadler v. DOT*, 311 Ga. App. 601, 716 S.E.2d 639 (2011).

Inspection for road hazards was not discretionary function. — The Georgia Department of Transportation's decision of when and where to inspect for road hazards during and following a rain event was not a policy decision requiring the exercise of discretion within the scope of O.C.G.A. § 50-21-24(2), although it involved a "judgment call" by DOT employees, and therefore the DOT did not have immunity from a suit stemming from a driver's hydroplaning in water on the road and drowning in a pond caused by a backed up storm drain. *Ga. DOT v. Miller*, 300 Ga. App. 857, 686 S.E.2d 455 (2009).

Trial court did not err in denying motions to dismiss co-executors' wrongful death claims against the Georgia Department of Transportation (DOT) because the DOT employees' operational inspections of the roadways, and the DOT's concomitant decisions as to whether or not to inspect and remove hazardous trees, did not constitute basic governmental policy decisions within the scope of the discretionary function exception to the waiver of immunity found in the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2). *Ga. DOT v. Smith*, 314 Ga. App. 412, 724 S.E.2d 430 (2012).

4. Others**College officials.**

College and a department were entitled to sovereign immunity in a claim seeking damages arising from the purchase of a nail primer product at the college because there was no showing of a waiver of a sovereign immunity under O.C.G.A. § 50-21-23(a); among other things, the record, including the allegations of the complaint, established that the nail kit purchased was owned and sold by a vendor who was an independent contractor.

Accordingly, the college and the department had no liability based on a failure to inspect the vendor's nail kits, which included the primer. *Coosa Valley Tech. College v. West*, 299 Ga. App. 171, 682 S.E.2d 187 (2009), cert. denied, No. S09C1954, 2010 Ga. LEXIS 9 (Ga. 2010).

Interference with contractual rights. — Georgia Tort Claims Act barred a state university professor's tortious interference claim against the university and its officials because the individual defendants were immune under O.C.G.A. § 50-21-21(b), and, under O.C.G.A. § 50-21-24(7), the State had no liability for losses resulting from interference with contractual rights. *Edmonds v. Bd. of Regents*, 302 Ga. App. 1, 689 S.E.2d 352 (2009), cert. denied, No. S10C0824, 2010 Ga. LEXIS 437 (Ga. 2010).

Department of Education. — In parents' action alleging that the Georgia Department of Education (DOE) was liable for their child's death by failing to fulfill a duty under the Individuals with Disabili-

ties Education Act (IDEA), 20 U.S.C. § 1400 et seq., to regulate a school's disciplinary procedures, the trial court did not err in granting the DOE's motion to dismiss because the DOE had not waived its sovereign immunity, and, given that the DOE had not waived its sovereign immunity with regard to any quasi-legislative action it undertook, it similarly could not be held to have waived its immunity when it chose to impose no administrative regulations whatsoever; although the DOE did inspect the school's time-out room logs during the course of its IDEA compliance review, that inspection did not render the DOE liable for injuries related to use of such rooms, and because the school was not a state-owned property, the DOE did not waive its sovereign immunity when it inspected the logs. *King v. Pioneer Reg'l Educ. Serv. Agency*, 301 Ga. App. 547, 688 S.E.2d 7 (2009), cert. denied, No. S10C0634, 2010 Ga. LEXIS 340 (Ga.); cert. denied, U.S. , 131 S. Ct. 504, 178 L. Ed. 2d 370 (2010).

50-21-25. Immunity of state officers or employees for acts within scope of official duties or employment; officer or employee not named in action against state; settlement or judgment.

JUDICIAL DECISIONS

Construction with O.C.G.A. § 36-92-3. — Due to the nearly identical language between O.C.G.A. §§ 36-92-3 and 50-21-25, the General Assembly intended to provide immunity for municipal employees in the context of torts involving a covered motor vehicle, which is comparable to the immunity granted to state employees in the context of all torts, as long as the pertinent conditions have been satisfied; thus, by the passage of O.C.G.A. § 36-92-3, the legislature intended to foreclose all recovery against municipal employees for torts committed within the scope of employment and involving the use of a covered motor vehicle. *DeLoach v. Elliott*, 289 Ga. 319, 710 S.E.2d 763 (2011).

Medicaid status irrelevant to constitutionality. — Grant of official immunity from a malpractice suit to a state-employed doctor based on the pa-

tient's status as a Medicaid patient did not violate the constitutional rights of the patient's parents as the due process and equal protection clauses of the U.S. and Georgia Constitutions protected only rights, and a waiver of sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was merely a privilege. *Porter v. Guill*, 298 Ga. App. 782, 681 S.E.2d 230 (2009).

Employees entitled to official immunity.

Plaintiff employee did not show that defendant school system waived its immunity, Ga. Const. 1983, Art. I, Sec. II, Para. IX(e), because she pointed to no legislative act providing for a waiver. In addition, because defendant superintendent was a state employee whose alleged tort was committed while acting within the scope of her employment, she also was entitled

to immunity, O.C.G.A. § 50-21-25(a). *Polite v. Dougherty County Sch. Sys.*, No. 07-14108, 2008 U.S. App. LEXIS 17128 (11th Cir. Aug. 11, 2008) (Unpublished).

Trial court did not err in disallowing a prison inmate to file a conversion claim against a warden and corrections officers under the Georgia Tort Claims Act (GTCA), O.C.G.A. §§ 50-21-20 to 50-21-37, because their actions were clothed with official immunity under the GTCA, O.C.G.A. § 50-21-25(b), since they were acting within the scope of their official duties when they confiscated the inmate's personal property; the inmate acknowledged that the Georgia Department of Corrections had to be named as a defendant, which necessarily amounted to a concession that Department employees were not proper defendants, and their alleged tortious conduct occurred while they were acting within the scope of their official duties. *Romano v. Ga. Dep't of Corr.*, 303 Ga. App. 347, 693 S.E.2d 521 (2010).

Exclusive remedy. — Georgia law waives sovereign immunity for tort suits against state officers and employees committed in the scope of employment under O.C.G.A. § 50-21-23, while a later statute, O.C.G.A. § 50-21-25, states that the procedure established under the Georgia Tort Claims Act provides the exclusive remedy for any tort committed by a state officer or employee under O.C.G.A. § 50-21-25(a). *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents*, 633 F.3d 1297 (11th Cir. 2011).

Special master entitled to immunity. — In a renter's suit asserting that the renter's due process rights were violated in connection with the renter's eviction after a bank's foreclosure on the property the renter was leasing, a special master who ruled in the renter's state court suit was immune from the renter's federal claims because the master was considered a judge for purposes of O.C.G.A. § 50-21-25. *Vereen v. Everett*, No. 1:08-CV-1969-RWS, 2009 U.S. Dist. LEXIS 27302 (N.D. Ga. Mar. 31, 2009).

State employed physician entitled to official immunity. — Under O.C.G.A.

§ 50-21-25(a), a state-employed physician was entitled to official immunity from medical malpractice actions brought by patients whose treatment was paid for by public funds when the doctor's treatment fell within the scope of the doctor's duties as a state employee. *Porter v. Guill*, 298 Ga. App. 782, 681 S.E.2d 230 (2009).

Physician, who was a second-year fellow at the Medical College of Georgia Children's Medical Center's Graduate Medical Education Program, was entitled to official immunity in a medical malpractice action under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 50-21-25(b) because the physician, who provided followup medical treatment to a child, was operating under the general supervision of an attending physician who was a faculty member and an employee of the Medical College of Georgia. *Jones v. Allen*, 312 Ga. App. 762, 720 S.E.2d 1 (2011).

State employed resident physicians entitled to official immunity. — In a medical malpractice action against a hospital and four residents, the residents were entitled to qualified immunity under O.C.G.A. § 50-21-25(a) because state-employed resident physicians were entitled to immunity from liability arising from the residents' treatment of patients during the course of the medical residency. *Nelson v. Bd. of Regents of the Univ. Sys. of Ga.*, 307 Ga. App. 220, 704 S.E.2d 868 (2010).

Physician treating private pay patient.

Two physicians, who were faculty members at the Medical College of Georgia Children's Medical Center, did not establish in a medical malpractice action that the physicians were entitled to qualified immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 50-21-25(b), because the child whom the physicians treated at the center was a private pay patient. Notwithstanding the physicians' official duties as faculty members, when they acted as physicians, the physicians' primary duty was to the child, rather than to the State of Georgia. *Jones v. Allen*, 312 Ga. App. 762, 720 S.E.2d 1 (2011).

50-21-33. Liability insurance or self-insurance programs; State Tort Claims Trust Fund; premiums and deductibles; incentive programs authorized; merger of preexisting programs and funds; additional coverages.

(a) The Department of Administrative Services shall formulate and initiate a sound program providing for liability insurance, self-insurance, or a combination of both to provide for payment of judgments and claims against the state under this article.

(b) The commissioner of administrative services shall have the authority to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the state against liabilities arising under this article. In addition or alternatively, the commissioner of administrative services may retain all moneys paid to the Department of Administrative Services by state government entities as premiums for insurance or indemnity against liabilities arising under this article, and all money specifically appropriated to the Department of Administrative Services for the payment of liabilities under this article, all moneys received as interest, and all funds received from other sources to set up and maintain a reserve fund for the payment of judgments and claims against the state under this article and for payment of the expenses necessary to properly administer a self-insurance program. Any amounts held by the State Tort Claims Trust Fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the State Tort Claims Trust Fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the State Tort Claims Trust Fund. When moneys are paid over to the Office of the State Treasurer, as provided in this subsection, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer. State agencies which provide services or incur expenses in connection with any claim covered by this article may receive payment from the fund for such services and expenses.

(c) Any reserve fund created under this Code section shall be designated the State Tort Claims Trust Fund.

(d) The Department of Administrative Services shall establish and charge to state government entities such premiums, deductibles, and other payments, taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or

self-insurance programs established under this Code section. The premiums and deductibles charged to each state government entity may be established on such basis as the Department of Administrative Services shall deem appropriate and such basis may include the number of employees, the aggregate annual budget of the state government entity, and unique exposures, loss history, or claims pending against such state government entity. The department is further authorized to establish incentive programs including but not limited to differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the State Tort Claims Trust Fund provided for in this Code section.

(e) Each state government entity shall promptly remit from appropriations or other funds available to it the premium thus established.

(f) Where existing programs have previously been established by the Department of Administrative Services for the insurance or self-insurance of the state, state government entities, or state officers or employees, the commissioner of administrative services shall be authorized to merge all or part of those programs, including all or part of any self-insurance funds established thereunder, into the State Tort Claims Trust Fund. This shall include, but not be limited to, any funds established by Code Sections 45-9-4 and 50-5-16. In so doing, the Department of Administrative Services shall be authorized, through the State Tort Claims Trust Fund, to assume or not assume all or part of existing and potential liabilities of the prior established programs and funds.

(g) As to state government entities for which additional particular coverages are necessary, the Department of Administrative Services may provide such additional particular coverages and other terms and conditions of unique exposure particular to one or more state government entities; may provide for endorsements for contract liability; and, where necessary to the public purposes of the state government entity, may also provide for additional insureds.

(h) Nothing in this Code section or in this article shall impose or create any obligation upon other funds of the state.

(i) Funds appropriated to the Department of Administrative Services for the State Tort Claims Trust Fund shall be deemed contractually obligated funds held in trust, subject to future legislative change or

revision, for the benefit of persons having claims, known or unknown, or judgments payable from the funds and shall not lapse. (Code 1981, § 50-21-33, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2000, p. 1474, § 12; Ga. L. 2008, p. 245, § 12/SB 425; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, in subsection (b), substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” twice and substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” three times.

CHAPTER 22

MANAGERIAL CONTROL OVER ACQUISITION OF PROFESSIONAL SERVICES

Sec.
50-22-2. Definitions.

50-22-2. Definitions.

As used in this chapter, the term:

(1) “Agency” means every state department, agency, board, bureau, commission, and authority, unless otherwise exempted under the provisions of subsection (b) of Code Section 50-22-7.

(2) “Person” means an individual, a corporation, a partnership, a business trust, an association, a firm, or any other legal entity.

(2.1) “Predesign” means that phase of an activity where requirements programming, site analysis, and other appropriate studies are conducted to develop essential information, including cost estimates, to support and advance the decision-making process prior to the design and implementation phases of an activity.

(3) “Principal representative” means the governing board of a state agency or the executive head of a state agency who is authorized to contract for the agency for professional services.

(4) “Professional services” means those services within the scope of the following:

(A) The practice of architecture, as defined in paragraph (11) of Code Section 43-4-1;

(B) The practice of registered interior design, as defined in Code Section 43-4-30;

(C) The practice of professional engineering, as defined in paragraph (11) of Code Section 43-15-2;

(D) The practice of land surveying, as defined in paragraph (6) of Code Section 43-15-2; or

(E) The practice of landscape architecture, as defined in paragraph (3) of Code Section 43-23-1.

(5) “Project” means any activity requiring professional services estimated by the state agency to have:

(A) A cost in excess of \$1 million; or

(B) Costs for professional services in excess of \$75,000.00. (Code 1981, § 50-22-2, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 1998, p. 1372, §§ 3, 4; Ga. L. 2001, p. 4, § 50; Ga. L. 2005, p. 1139, § 2/HB 155; Ga. L. 2010, p. 748, § 5/HB 231.)

The 2010 amendment, effective June 2, 2010, substituted “paragraph (11)” for “paragraph (6)” in subparagraph (4)(A).

CHAPTER 23

ENVIRONMENTAL FINANCE AUTHORITY

Article 1		Sec.	
Environmental Finance Authority			collect and remit amounts when due.
PART 1		50-23-21.	Grants for clean energy property; rules and regulations; annual report.
GENERAL PROVISIONS			
Sec.			PART 2
50-23-1.	Short title.		WATER SUPPLY DIVISION
50-23-2.	Legislative intent; assumption of rights, duties, and assets of the Georgia Development Authority.	50-23-25.	“Division” defined.
		50-23-26.	Creation of Water Supply Division; director.
50-23-3.	Creation of Georgia Environmental Finance Authority; members; quorum; travel and expenses; legal services; members’ accountability recordkeeping; authority assigned.	50-23-28.1.	Authority to make loans and grants to local governments for expansion of existing reservoirs; criteria.
		50-23-28.2.	Participation by division in certain local water reservoir, facilities, and systems projects.
50-23-4.	Definitions.		
50-23-5.	Purpose, powers, and duties.		Article 2
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		50-23-30.	“Division” defined.

Sec.	Sec.
50-23-31. Creation; executive director.	50-23-32. Powers and duties.

ARTICLE 1
ENVIRONMENTAL FINANCE AUTHORITY

PART 1
GENERAL PROVISIONS

50-23-1. Short title.

This article shall be known and may be cited as the “Georgia Environmental Finance Authority Act.” (Code 1981, § 50-23-1, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” in this Code section.

50-23-2. Legislative intent; assumption of rights, duties, and assets of the Georgia Development Authority.

(a) It is found and declared that the availability of adequate environmental facilities is an important element in the ability of a community to provide for the continuing economic growth and development that provide jobs for the state’s citizens. It is also recognized that many communities lack the financial resources to provide for the needed facilities that both protect the environment and provide for such future economic expansion. Financial assistance is an important aid for the local governments in meeting these needs and it is declared in the public interest and for the public benefit and good and is so desired as a matter of legislative intent.

(b) It is the purpose and intent of this article to provide an instrumentality to assist in constructing, extending, rehabilitating, repairing, and renewing environmental facilities and to assist in the financing of such needs by providing grants, loans, bonds, and other assistance to local governments and instrumentalities of the state.

(c) The authority shall receive all assets of the Georgia Development Authority held immediately prior to the creation of the Georgia Environmental Finance Authority except those assets received under the provisions of Public Law 499, Eighty-first Congress, Second Session, or funds or assets derived from such funds or assets. The authority shall be responsible for any contracts, leases, agreements, or other obligations entered into regarding the environmental facilities projects of the

Georgia Development Authority prior to the creation of the Georgia Environmental Finance Authority and the Georgia Environmental Finance Authority is substituted as party to any such contract, agreement, lease, or other obligation and shall be responsible for performance thereon as if it had been the original party and shall be entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations. (Code 1981, § 50-23-2, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2001, p. 1225, § 2; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia Environmental Facilities Authority" three times in subsection (c).

50-23-3. Creation of Georgia Environmental Finance Authority; members; quorum; travel and expenses; legal services; members' accountability recordkeeping; authority assigned.

(a) There is created a body corporate and politic to be known as the Georgia Environmental Finance Authority which shall be deemed an instrumentality of the state and a public corporation; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state. The authority shall consist of 11 members: the commissioner of community affairs, ex officio; the state auditor, ex officio; the commissioner of economic development, ex officio; and eight members to be appointed by the Governor. Three members shall be municipal officials, three members shall be county officials, and two members shall be at large. Any municipal or county official shall serve only so long as such official remains in office as a municipal or county official. The Governor shall appoint one municipal official, one county official, and one at-large member to serve until July 1, 1989; and shall appoint two municipal officials, two county officials, and one at-large member of the authority to serve until July 1, 1990. After the expiration of these terms, the terms of all succeeding members shall be for four years.

(b) A majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The members of the authority shall be entitled to and shall be reimbursed for their actual travel and expenses necessarily incurred in the performance of their duties and shall receive the same per diem as do members of the General Assembly. The authority shall make rules and regulations for its own government. The authority shall have perpetual existence. Any change in the name or composition of the authority shall in no way affect the

vested rights of any person under this article or impair the obligations of any contracts existing under this article. The Attorney General shall provide legal services for the authority and in connection therewith Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

(c) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to an independent auditing firm selected by the authority on or about the close of the state's fiscal year for the purpose of obtaining a certified audit of the authority's finances.

(d) The authority is assigned to the Department of Community Affairs for administrative purposes only. (Code 1981, § 50-23-3, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1641, § 17; Ga. L. 1991, p. 1685, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2004, p. 690, § 42; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia Environmental Facilities Authority" near the middle of the first sentence of subsection (a).

50-23-4. Definitions.

As used in this chapter, the term:

(1) "Authority" means the Georgia Environmental Finance Authority.

(2) "Bond" includes revenue bond, bond, note, or other obligation.

(3) "Cost of project" or "cost of any project" means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, or rehabilitation incurred in connection with any project or any part of any project;

(B) All costs of real property, fixtures, or personal property used in or in connection with or necessary for any project or for any facilities related thereto, including but not limited to, the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project;

(C) All financing charges, bond insurance, and loan or loan guarantee fees and all interest on revenue bonds, notes, or other obligations of the authority which accrue or are paid prior to and during the period of construction of a project and during such additional period as the authority may reasonably determine to be necessary to place such project in operation;

(D) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project;

(E) All expenses for inspection of any project;

(F) All fees of fiscal agents, paying agents, and trustees for bondholders under any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, and trustees; and all other costs and expenses incurred relative to the issuance of any bonds, revenue bonds, notes, or other obligations for any project, including bond insurance;

(G) All fees of any type charged by the authority in connection with any project;

(H) All expenses of or incidental to determining the feasibility or practicability of any project;

(I) All costs of plans and specifications for any project;

(J) All costs of title insurance and examinations of title with respect to any project;

(K) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project or the financing thereof or the placing of any project in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture, or trust or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds, notes, or other obligations issued by the authority.

(4) "County" means any county created under the Constitution or laws of this state.

(5) "Environmental facilities" means any projects, structures, and other real or personal property acquired, rehabilitated, constructed, or planned:

(A) For the purposes of supplying, distributing, and treating water and diverting, channeling, or controlling water flow and head including, but not limited to, surface or ground water, canals, reservoirs, channels, basins, dams, aqueducts, standpipes, penstocks, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, intake stations, waterworks or sources of water supply, wells, purification or filtration plants or other treatment plants and works, connections, water meters, mechanical equipment, electric generating equipment, rights of flowage or division and other plant structures, equipment, conveyances, real or personal property or rights therein and appurtenances, furnishings, accessories, and devices thereto necessary or useful and convenient for the collection, conveyance, distribution, pumping, treatment, storing, or disposing of water;

(B) For the purposes of collecting, treating, or disposing of sewage including, but not limited to, main, trunk, intercepting, connecting, lateral, outlet, or other sewers, outfall, pumping stations, treatment and disposal plants, ground water recharge basins, backflow prevention devices, sludge dewatering or disposal equipment and facilities, clarifiers, filters, phosphorus removal equipment and other plants, soil absorption systems, innovative systems or equipment, structures, equipment, vehicles, conveyances, real or personal property or rights therein, and appurtenances thereto necessary or useful and convenient for the collection, conveyance, pumping, treatment, neutralization, storing, and disposing of sewage;

(C) For the purposes of collecting, treating, recycling, composting, or disposing of solid waste, including, but not limited to, trucks, dumpsters, intermediate reception stations or facilities, transfer stations, incinerators, shredders, treatment plants, landfills, landfill equipment, barrels, binders, barges, alternative technologies and other plant structures, equipment, conveyances, improvements, real or personal property or rights therein, and appurtenances, furnishings, accessories, and devices thereto nec-

essary or useful and convenient for the collection, treatment, or disposal of solid waste; or

(D) For the purposes of carrying out a community land conservation project or a state land conservation project pursuant to Chapter 22 of Title 36.

(6) "Environmental services" means the provision, collectively or individually, of water facilities, sewerage facilities, solid waste facilities, community land conservation projects or state land conservation projects pursuant to Chapter 22 Title 36, or management services.

(7) "Local government" or "local governing authority" means any municipal corporation or county or any local water or sewer or sanitary district and any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the state.

(8) "Management services" means technical, administrative, instructional, or informational services provided to any current or potential loan recipient in, but not limited to, the areas of service charge structure; accounting, capital improvements budgeting or financing; financial reporting, treasury management, debt structure or administration or related fields of financial management; contract or grant administration; management of water, sewer, or solid waste systems; and economic development administration or strategies. Management services may be furnished either directly, on-site, or through other written or oral means of communication and may consist of reports, studies, presentations, or other analyses of a written or oral nature.

(9) "May" means permission and not command.

(10) "Municipal corporation" or "municipality" means any city or town in this state.

(10.1) "Nongovernmental entity" means a nonprofit organization the primary purposes of which are the permanent protection and conservation of land and natural resources.

(10.2) "Nonprofit corporation" means any corporation qualified as a not for profit corporation by the Internal Revenue Service under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.

(11) "Obligation" means any bond, revenue bond, note, lease, contract, evidence of indebtedness, debt, or other obligation of the authority, the state, or local governments which are authorized to be issued under this chapter or under the Constitution or other laws of this state, including refunding bonds.

(12) "Project" means:

(A) The acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of providing environmental facilities and services so as to meet public health and environmental standards, protect the state's valuable natural resources, or aid the development of trade, commerce, industry, agriculture, and employment opportunities, including, but not limited to, any project as defined by Code Section 12-5-471; and

(B) Projects authorized by the Georgia Regional Transportation Authority created by Chapter 32 of this title as defined in such chapter, where the authority has been directed to issue revenue bonds, bonds, notes, or other obligations to finance such project or the cost of a project in whole or in part, provided that the authority's power with respect to such projects authorized by the Georgia Regional Transportation Authority shall be limited to providing such financing and related matters as authorized by the Georgia Regional Transportation Authority.

(13) "Revenue bond" includes bond, note, or other obligation.

(14) "Self-liquidating project" means any project or combination of projects if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which may be issued for the cost of such project, projects, or combination of projects.

(15) "Sewerage facility" means any environmental facility described in subparagraph (B) of paragraph (5) of this Code section, defining "environmental facilities."

(15.5) "Solid waste facility" means any environmental facility described in subparagraph (C) of paragraph (5) of this Code section, defining "environmental facilities."

(16) "Water facility" means any environmental facility described in subparagraph (A) of paragraph (5) of this Code section, defining "environmental facilities." (Code 1981, § 50-23-4, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, §§ 1-3; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 1108, § 6; Ga. L. 1999, p. 112, § 8; Ga. L. 2006, p. 267,

§ 1/HB 1319; Ga. L. 2008, p. 90, § 3-1/HB 1176; Ga. L. 2008, p. 644, § 2-2/SB 342; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” at the end of paragraph (1).

50-23-5. Purpose, powers, and duties.

(a) The corporate purpose and the general nature of the business of the Georgia Environmental Finance Authority shall be assistance in constructing, extending, rehabilitating, repairing, replacing, and renewing environmental facilities necessary for public purposes and commercial, residential, and industrial development purposes or necessary or incidental to such purposes by providing grants, loans, bonds, and other forms of financial and technical assistance to local governments and instrumentalities of the state to finance any project or pay the cost of any project.

(b) The authority shall have power:

(1) To sue and be sued in all courts of this state, the original jurisdiction and venue of such actions being the Superior Court of Fulton County;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, such contracts, leases, or instruments to include contracts for construction, operation, management, or maintenance of projects and facilities owned by local government, the authority, or by the state or any state authority; and any and all local governments, departments, institutions, authorities, or agencies of the state are authorized to enter into contracts, leases, agreements, or other instruments with the authority upon such terms and to transfer real and personal property to the authority for such consideration and for such purposes as they deem advisable;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To appoint an executive director who shall be executive officer and administrative head of the authority. The executive director shall be appointed and serve at the pleasure of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform

such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;

(6) To finance projects by loan, loan guarantee, grant, lease, or otherwise, and to pay the cost of any project from the proceeds of bonds, revenue bonds, notes, or other obligations of the authority or any other funds of the authority or from any contributions or loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the authority is authorized to receive, accept, and use;

(7) To make loans, through the acquisition of bonds, revenue bonds, notes, or other obligations, and to make grants to local governments to finance projects and to pay the cost of any project by local government and to adopt rules, regulations, and procedures for making such loans and grants;

(8) To borrow money to further or carry out its public purpose and to issue revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(9) To issue revenue bonds, bonds, notes, or other obligations of the authority, to receive payments from the Department of Community Affairs, and to use the proceeds thereof for the purpose of:

(A) Paying or loaning the proceeds thereof to pay, all or any part of, the cost of any project or the principal of and premium, if any, and interest on the revenue bonds, bonds, notes, or other obligations of any local government issued for the purpose of paying in whole or in part, the cost of any project and having a final maturity not exceeding three years from the date of original issuance thereof;

(B) Paying all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out the purposes of the authority; and

(C) Paying all costs of the authority incurred in connection with the issuance of the revenue bonds, bonds, notes, or other obligations;

(10) To collect fees and charges in connection with its loans, commitments, management services, and servicing including, but not limited to, reimbursements of costs of financing, as the authority

shall determine to be reasonable and as shall be approved by the authority;

(11) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government and its subsidiary corporations and instrumentalities or entities sanctioned or authorized by the United States government including, but not limited to, the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, Farm Credit Banks regulated by the Farm Credit Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks or federal savings and loan associations located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of state building and loan associations located within the state which have deposits insured by any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corpora-

tion, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(G) Prime bankers' acceptances; and

(H) State operated investment pools;

(12) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(13) To invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of

this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (11) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments, schedule for which such moneys are to be applied;

(14) To provide advisory, technical, consultative, training, educational, and project assistance services to the state and local government and to enter into contracts with the state and local government to provide such services. The state and local governments are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(15) To make loan commitments and loans to local government and to enter into option arrangements with local government for the purchase of said bonds, revenue bonds, notes, or other obligations;

(16) To sell or pledge any bonds, revenue bonds, notes, or other obligations acquired by it whenever it is determined by the authority that the sale thereof is desirable;

(17) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(18) To lease to local governments any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state;

(19) To contract with state agencies or any local government for the use by the authority of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority and such state agencies and local governments are authorized to enter into such contracts;

(20) To extend credit or make loans, including the acquisition of bonds, revenue bonds, notes, or other obligations to the state, any local government, or other entity, including the federal government, for the cost or expense of any project or any part of the cost or expense of any project, which credit or loans may be evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, or assignments, on such

terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such trust indentures, loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project and such other terms and conditions as the authority may deem necessary or desirable;

(21) As security for repayment of any bonds, revenue bonds, notes, or other obligations of the authority, to pledge, lease, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority including, but not limited to, real property, fixtures, personal property, and revenues or other funds and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument;

(22) To receive and use the proceeds of any tax levied by a local government to pay all or any part of the cost of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(23) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine, including, but not limited to, the use of repaid principal and earnings on funds, the ultimate source of which was an appropriation to a budget unit of the state to make loans for solid waste projects;

(23.1) To exercise such powers and perform such functions as provided for the authority under Chapter 6A of Title 12, including but not limited to the making of grants and loans as provided therein, for purposes of land conservation projects as defined in said chapter; and to provide advisory, technical, consultative, training, educational, and assistance services and enter into agreements for the same for purposes of such land conservation projects;

(23.2) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority including but not limited to accepting donations to be used to advance state-wide energy education and energy efficiency and conservation initiatives. Any such subsidiary corporation shall be a nonprofit corporation, a public body corporate and politic, a political subdivision of the state, and an instrumentality of the state and shall exercise essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents;

(24) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations; with agencies of the federal government and this state and local government; with other states and their political subdivisions; and with joint agencies thereof and such state agencies, local government, and joint agencies are authorized and empowered to cooperate and act in conjunction, and to enter into contracts or agreements with the authority and local government to achieve or further the policies of the state declared in this chapter;

(25) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(26) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(27) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(28) To designate three or more of its number to constitute an executive committee who, to the extent provided in such resolution or in the bylaws of the authority, shall have and may exercise the powers of the authority in the management of the affairs and property of the authority and the exercise of its powers;

(29) To procure insurance against any loss in connection with its property and other assets or obligations or to establish cash reserves to enable it to act as self-insurer against any and all such losses;

(30) To administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title VI of the Federal Water Pollution Control Act and Title XIV of the federal Safe Drinking Water Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or to any public authority or, if authorized by law, any private agency, commission, or institution for construction of treatment works as that term is defined in Section 212 of the federal Clean Water Act of 1977, P.L. 95-217, which are publicly owned. The authority may also administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title XIV of the federal Safe Drinking Water Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or any public or, if authorized by law, any private authority, agency, commission, or institution for the construction of public drinking water works as such term is defined in Section 1401 of the federal Safe Drinking Water Act Amendments of 1986, P.L. 99-339. The authority may also administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to 33 U.S.C.A. Section 1381, et seq., for the purpose of providing financial assistance for any eligible water pollution control project. The authority shall deposit any such funds received from the administrator of the federal Environmental Protection Agency into a separate water pollution control revolving fund or a drinking water revolving fund transferred to the authority from the Environmental Protection Division of the Department of Natural Resources or hereafter established; provided, however, that where appropriate, the authority may deposit funds received from the administrator of the federal Environmental Protection Agency into the Georgia Reservoir Fund established by Code Section 50-23-28. The forms and administration of such funds shall be established by the authority in accordance with federal requirements;

(30.1) To exercise any powers necessary or convenient to conduct the activities and perform the acts that are contemplated for the authority by Chapter 22 of Title 36;

(30.2) To fund, or partially fund, the Georgia Land Conservation Revolving Loan Fund established by Chapter 22 of Title 36;

(31) To contract with the Environmental Protection Division of the Department of Natural Resources for the implementation and operation, in whole or in part, of any drought protection or reservoir program and for the purposes of Article 6 of Chapter 5 of Title 12;

(31.1) To fund, or partially fund, the Georgia Reservoir Fund established by Code Section 50-23-28. Proceeds of any bonds autho-

ized by the General Assembly for the purposes of said Code section, and any repayment of such proceeds after their expenditure, may be deposited in such fund;

(31.2) For the purpose of supplementing and extending the ability of the authority to expedite and accommodate the construction of projects, to enter into arrangements, consistent with existing bond indenture and other obligations of the authority, whereby the authority agrees to enter into one or more notes with a financial institution or other lender, the proceeds of which shall be payable to the authority and which constitute an obligation of the authority, together with a companion note or notes on substantially the same terms payable from the authority to a local government, with such companion notes, and the obligation of repayment thereon, pledged as security for the repayment of such notes, on such terms as may be agreeable to the parties thereto;

(32) To lend any of the securities of the type described in this subsection; and

(33) To transfer to the state any funds of the authority determined by the authority to be in excess of those needed for its corporate purposes.

(c) The authority shall not have the power of eminent domain. (Code 1981, § 50-23-5, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1991, p. 94, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 1992, p. 2316, § 1; Ga. L. 1994, p. 555, § 2; Ga. L. 1994, p. 1108, § 6; Ga. L. 2000, p. 458, § 3; Ga. L. 2001, p. 1225, § 3; Ga. L. 2003, p. 359, § 2; Ga. L. 2004, p. 319, § 4; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2006, p. 267, § 2/HB 1319; Ga. L. 2008, p. 90, § 3-2/HB 1176; Ga. L. 2008, p. 644, § 2-3/SB 342; Ga. L. 2010, p. 949, §§ 1, 1A, 2/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” near the beginning of subsection (a); in paragraph (b)(23.2), added the second sentence

and substituted a semicolon for a period at the end of the last sentence; deleted “and” at the end of paragraph (b)(31.2); substituted “; and” for a period at the end of paragraph (b)(32); and added paragraph (b)(33).

50-23-20. Withholding state funds from local governments or nongovernmental entities failing to collect and remit amounts when due:

(a) In the event of a failure of any local government or nongovernmental entity to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government or nongovernmental entity, it shall

be the duty of the authority to notify the state treasurer who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government or nongovernmental entity until such local government or nongovernmental entity has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government or nongovernmental entity which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of any court binding the state. (Code 1981, § 50-23-20, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 1108, § 6; Ga. L. 2008, p. 90, § 3-4/HB 1176; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the middle of subsection (a).

50-23-21. Grants for clean energy property; rules and regulations; annual report.

(a) As used in this Code section, the term:

(1) “Authority” means the Georgia Environmental Finance Authority.

(2) “Clean energy property” includes any of the following:

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active and passive space heating and cooling, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(B) Energy Star certified geothermal heat pump systems;

(C) Energy efficient projects as follows:

(i) **Lighting retrofit projects.** “Lighting retrofit project” means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light distribution), delamping, daylighting, relamping, or other controls or processes which reduce annual energy and power consumption by 30 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

(ii) **Energy efficient buildings.** “Energy efficient building” means for other than single-family residential property new or retrofitted buildings that are designed, constructed, and certified to exceed the standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004) by 30 percent; and

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment.

(3) “Cost” means:

(A) In the case of clean energy property owned by a person, cost is the aggregate funds actually invested and expended by a person to put into service the clean energy property; and

(B) In the case of clean energy property a person leases from another, cost is eight times the net annual rental rate, which is the annual rental rate paid by the person less any annual rental rate received by the person from subrentals.

(4) “Installation” means the year in which the clean energy property is put into service and becomes eligible for a grant allowed by this Code section.

(b)(1) The authority may issue a grant to any person for the construction, purchase, or lease of clean energy property that is placed into service in this state, other than in single-family residential structures, between January 1, 2009, and December 31, 2012, subject to the provisions of this Code section.

(2) A person that receives a grant allowed under this Code section shall not be eligible to claim any tax credit under Code Section 48-7-29.14 or any other grant under this Code section with respect to the same clean energy property.

(3) A person shall not receive a grant allowed in this Code section for clean energy property the person leases from another unless such person obtains the lessor’s written certification that the lessor will not receive a grant under this Code section or claim a credit under Code Section 48-7-29.14 with respect to the same clean energy property.

(4) Grants shall not be issued under this Code section except to effect participation in a federal government program which authorizes the use of federal funds for purposes of this Code section. In no event shall the total amount of grants allowed by this Code section exceed federal funds allocated by the authority for such purposes. No

funds derived from any other sources shall be granted under this Code section.

(5)(A) Any person seeking any grant provided for under this Code section shall submit an application to the authority for approval of such grant. The authority shall promulgate the forms on which the application is to be submitted. The authority shall review such application and shall approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application, subject to availability of funds as provided by paragraph (4) of this subsection.

(B) To apply for a grant allowed by this Code section, the person shall provide any information required by the authority. Every person receiving a grant under this Code section shall maintain and make available for inspection by the authority any records that the authority considers necessary to determine and verify the amount of the grant to which the person is entitled. The burden of proving eligibility for a grant and the amount of the grant shall rest upon the applicant, and no grant shall be allowed to a person that fails to maintain adequate records or to make them available for inspection.

(C) The authority shall issue the grants on a first come, first served basis. In no event shall the aggregate amount of grants approved by the authority for all applicants under this Code section exceed the limitations specified in paragraph (4) of this subsection.

(6) Any grant allowed by paragraph (1) of this subsection shall not exceed the lesser of 35 percent of the cost of the clean energy property described in subparagraphs (a)(2)(A) through (a)(2)(D) of this Code section or the following grant amounts for any clean energy property:

(A) A ceiling of \$500,000.00 per installation applies to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating and wind equipment as described in subparagraphs (a)(2)(A) and (a)(2)(D) of this Code section;

(B) The sum of \$100,000.00 per installation applies to clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(2)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(C) For Energy Star certified geothermal heat pump systems as described in subparagraph (a)(2)(B) of this Code section, the sum of \$100,000.00;

(D) For a lighting retrofit project as described in division (a)(2)(C)(i) of this Code section, the sum of \$0.60 per square foot of the building with a maximum of \$100,000.00; and

(E) For an energy efficient building as described in division (a)(2)(C)(ii) of this Code section, the sum of the cost of energy efficient products installed during construction at \$1.80 per square foot of the building, with a maximum of \$100,000.00.

(c) The authority shall be authorized to adopt rules and regulations to provide for the administration of any grant provided by this Code section. Specifically, the authority shall create a mechanism to track and report the status and availability of grants for the public to review at a minimum on a quarterly basis.

(d) The authority shall provide an annual report of:

(1) The number of persons that claimed the grants allowed in this Code section;

(2) The cost of clean energy property with respect to which grants were issued;

(3) The type of clean energy property installed and the location;

(4) A determination of associated energy and economic benefits to the state; and

(5) The total amount of grants allowed. (Code 1981, § 50-23-21, enacted by Ga. L. 2009, p. 153, § 1/HB 473.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “Georgia Environmental Finance Authority” was substituted for “Georgia Environmental Facilities Authority” in paragraph (a)(1).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33,

36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

PART 2

WATER SUPPLY DIVISION

50-23-25. “Division” defined.

As used in this part, the term “division” means the Water Supply Division of the Georgia Environmental Finance Authority created by Code Section 50-23-26. (Code 1981, § 50-23-25, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia

Environmental Facilities Authority” near the middle of this Code section.

50-23-26. Creation of Water Supply Division; director.

There is created within the Georgia Environmental Finance Authority a Water Supply Division. The executive director of the authority or an employee of the authority designated by the director shall serve as the director of the division and shall have full authority over the operation, personnel, and facilities of the division. (Code 1981, § 50-23-26, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia

Environmental Facilities Authority” in the first sentence.

50-23-28.1. Authority to make loans and grants to local governments for expansion of existing reservoirs; criteria.

(a) The division may make loans and grants to a local government to pay all or any part of the cost of expanding and increasing the capacity of existing reservoirs. Such loans and grants shall be made as provided in Code Section 50-23-6. The criteria used in consideration for requests for assistance shall include, but not be limited to:

(1) The effect of recurring drought on the region;

(2) Interconnectivity of the requesting entity’s water supply system with one or more surrounding local governments; and

(3) Unique regional conditions.

(b) Beginning in 2010, on July 1 of each year in which adequate funds are available, the division shall give public notice that it will accept applications for loans and grants as provided in subsection (a) of this Code section. Requests shall be submitted and awards shall be made according to such schedules and deadlines as may be provided by the division. (Code 1981, § 50-23-28.1, enacted by Ga. L. 2010, p. 204, § 3/SB 380.)

Effective date. — This Code section became effective May 20, 2010.

Cross references. — Completion and submission of emergency plan and costs, § 12-5-204

Editor’s notes. — Ga. L. 2010, p. 204,

§ 1, not codified by the General Assembly, provides: “Section 2 of this Act shall be known and may be cited as the ‘Water System Interconnection, Redundancy, and Reliability Act.’” Section 2 added a new Part 6 to T. 12, C. 5, A. 3.

50-23-28.2. Participation by division in certain local water reservoir, facilities, and systems projects.

(a) Those definitions made applicable to Article 4 of Chapter 91 of Title 36 by Code Section 36-91-100 shall be applicable to this Code section.

(b) The division may evaluate any project to determine, in the judgment of the division, appropriate or desirable levels of state or private participation in such project. In identifying any such project and making such determination, the division shall seek the advice and input of the affected local governments and shall be authorized to seek and receive advice and input from local authorities and the private financial and construction sectors. The division may also propose projects to local governing authorities and local authorities as appropriate for the procedures of Article 4 of Chapter 91 of Title 36. The division shall be authorized to consult with local governing authorities and local authorities regarding its conclusions with respect to projects subject to this subsection.

(c) Local governing authorities and local authorities participating in the consideration of a project may, by mutual consent, request in writing that the division participate in the project in any capacity authorized by law, pursuant to the provisions of paragraph (7) of subsection (b) of Code Section 50-23-5 and Code Section 50-23-6. The participating local governments and local authorities may request in writing that the division serve as the lead local authority for such project, and if the division accedes to such request, the division shall assume all of the duties and responsibilities of the lead local authority pursuant to the provisions of Article 4 of Chapter 91 of Title 36, for itself and on behalf of such local governing authorities and local authorities, subject to the conditions and limitations of such article.

(d) In addition to the conditions and limitations of Article 4 of Chapter 91 of Title 36, the following shall be applicable to the division when acting pursuant to this Code section:

(1) Public notice of any request for proposals shall be made at least 90 days prior to the date set for receipt of proposals by posting a legal notice on the website of the Department of Administrative Services;

(2) The designated representative of the lead local authority, when the division is such lead local authority, shall be the director;

(3) No contract awarded under this subsection shall be operative until the governing authority of each participating local governing authority and local authority and each affected local government has approved the contract;

(4) For any project for which participation or a lead local authority role is determined by the division to be feasible and appropriate, the division may perform management, technical, consultative, training, educational, and other project development and promotion activities, subject to availability of funds from the Georgia Reservoir Fund established by Code Section 50-23-28, approval by the executive director of the authority, and the requirement that the fund be fully compensated by any private owner of the project for such expenditures; and

(5) Any project financed or constructed in whole or in part by the division shall be subject to environmental and development restrictions imposed on projects of the division by law.

(e) In discharging its duties and responsibilities under this Code section, the division:

(1) Shall to the maximum extent feasible expedite the issuance of the permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county, municipality, consolidated government, or local agency or authority of this state necessary and convenient for the purposes of this article;

(2) May enter into lease, use, or water supply agreements with the owner or operator of any project or water facility;

(3) May lease to an owner or operator of a project any state-owned facilities or property which the division is managing in connection with a project;

(4) May utilize the competitive bidding and competitive sealed proposal procedures adopted by the Department of Administrative Services under Code Section 50-5-67 and regulations promulgated pursuant to the authority thereof; and

(5) May enter into agreements with local governing authorities, local authorities, or an owner or operator or proposed operator of a project, setting fees to be paid to the division or the Department of Natural Resources for the purpose of enabling the division or the Department of Natural Resources to expedite or enhance the state or federal regulatory process.

(f) The director shall be authorized to delegate such duties and responsibilities under this Code section as he or she deems appropriate from time to time; provided, however, that the final approval of state projects and contracts provided for in this article shall be by action of the director.

(g) Nothing in this Code section shall be construed to delegate the power of eminent domain to any private entity with respect to any

project commenced or proposed pursuant to this Code section. The state and any local government may exercise the power of eminent domain in the manner provided by law for the purpose of acquiring any property or interests therein to the extent that such action serves the public purpose of this Code section.

(h) All affected local governments which approve a project shall have agreed, by reason of such approval, to amend and to have amended, consistent with such approval, any service delivery strategy agreement required by Article 2 of Chapter 70 of Title 36 to which they are a party.

(i)(1) With respect to contracts of such state agency or authority, no employee, officer, or member of any state agency or authority or board thereof shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member.

(2) No employee, officer, or member of the General Assembly shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member.

(3) With respect to contracts of such local governing authority or local authority, no employee, officer, or member of any local governing authority or local authority shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member. (Code 1981, § 50-23-28.2, enacted by Ga. L. 2011, p. 52, § 2/SB 122.)

Effective date. — This Code section became effective May 2, 2011.

ARTICLE 2

DIVISION OF ENERGY RESOURCES

50-23-30. “Division” defined.

As used in this article, the term “division” shall mean the Division of Energy Resources of the Georgia Environmental Finance Authority. (Code 1981, § 50-23-30, enacted by Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” near the end of this Code section.

50-23-31. Creation; executive director.

There is created within the Georgia Environmental Finance Authority a Division of Energy Resources. The executive director of the authority or an employee of the authority designated by the director shall serve as the director of the division and shall have full authority over the operation, personnel, and facilities of the division. (Code 1981, § 50-23-31, enacted by Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” near the middle of the first sentence.

50-23-32. Powers and duties.

(a) The Division of Energy Resources of the Georgia Environmental Finance Authority shall have sole authority and responsibility for the administration of this article.

(b) The division shall have the authority and responsibility to do the following:

(1) Consult with other departments, agencies, or officials of this state or political subdivisions thereof and appropriate private and professional organizations in matters related to energy. Any other department, educational institution, agency, or official of this state or political subdivision thereof which in any way would affect the administration or enforcement of this article is required to coordinate all such activities with the division to assure orderly and efficient administration and enforcement of this article;

(2) Do all things necessary to cooperate with the United States government and qualify for, accept, and disburse any public or private grant intended for the administration of this article;

(3) Apply for, receive, accept, and administer federal funds and programs made available to the state for the purposes of this article;

(4) Contract for services if such services cannot be satisfactorily performed by employees of the division or by any other state agency;

(5) Enter into agreements to carry out energy related research and planning jointly with other states or the federal government where appropriate;

(6) Inform, educate, and provide materials to other agencies of the state or political subdivisions thereof and to the public on all energy related matters, with particular emphasis on energy consumption trends and their social, environmental, and economic impacts; conservation and energy efficiency; and alternative energy technologies;

(7) Monitor and assess the relationship and impact of international, federal, and regional energy policies on the state's energy policies and programs;

(8) Collect and analyze data relating to past, present, and future consumption levels for all sources of energy and report such findings to the Governor annually. Such reports shall make recommendations on actions which would further the purposes of energy conservation and management;

(9) Prepare and present to the government for approval a standby emergency plan setting forth actions to be taken in the event of an impending serious shortage of energy or a threat to public health, safety, or welfare;

(10) Design and implement a program to encourage energy conservation and efficiency, to include, but not be limited to, public, commercial, industrial, governmental, and residential areas;

(11) Maintain awareness of all energy related research, with particular emphasis on alternative energy resources creating minimal environmental impact, which research could be of importance to the state's welfare for the purposes of providing constructive and supportive action;

(12) Solicit funds made available for the purposes of information, research studies, demonstrations, and projects of professional and civic orientation which are related to energy conservation and efficiency, the development and utilization of alternative energy technologies, and other appropriate energy related areas; and

(13) Design and implement programs to assist local governing authorities and other entities in implementing alternative energy projects. (Code 1981, § 50-23-32, enacted by Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted "Georgia Environmental Finance Authority" for "Georgia

Environmental Facilities Authority" in subsection (a).

CHAPTER 25

GEORGIA TECHNOLOGY AUTHORITY

Sec. 50-25-5.1.	Chief information officer; ap- pointment and removal; com- pensation; powers and duties.	Sec. 50-25-7.10.	Annual state information technology report; require- ments; standards.
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50-25-5.1. Chief information officer; appointment and removal; compensation; powers and duties.

(a) There is created the position of the chief information officer for the State of Georgia who shall be both appointed and removed by a vote of a majority of the full membership to which the authority is entitled. The authority shall determine the compensation of the chief information officer. The chief information officer shall serve as the executive director of the authority.

(b) Subject to the general policy established by the authority, the chief information officer shall have the following powers and duties in addition to those otherwise enumerated in this chapter:

- (1) To supervise, direct, account for, organize, plan, administer, and execute the functions required of the chief information officer by the authority;
- (2) To provide assistance to agency heads in evaluating information officer performance for each agency and in selection of candidates for such positions;
- (3) To establish performance management standards, approved by the board regarding success of projects, agency technology performance, and authority performance;
- (4) To submit an annual budget for approval and adoption by the board;
- (5) To review periodic reports submitted by agencies;
- (6) To hire officers, agents, and employees, prescribe their duties and qualifications, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director. The executive director and other employees of the authority shall be considered state employees for purposes of employment and retirement benefits and subject to any laws, rules, or regulations governing eligibility for such benefits. Any officer or employee of the authority who is already a member of the Employees' Retirement System of Georgia by virtue of services with another employer shall be entitled to credit for his or

her services and shall not suffer any loss of such credit to which he or she is otherwise entitled. There shall be paid from the funds appropriated or otherwise available for the operation of the Georgia Technology Authority all employer's contributions required under this chapter;

(7) To contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of attorneys, accountants, systems engineers, consultants, and advisers, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits; and

(8) To perform such other duties as the authority may direct from time to time. (Code 1981, § 50-25-5.1, enacted by Ga. L. 2000, p. 249, § 11; Ga. L. 2009, p. 133, § 2/HB 436; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-109/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "for purposes of employment and retirement benefits and subject to any laws, rules, or regulations governing eligibility for such benefits" for "in the unclassified service of the State Personnel Administration for the purposes of benefits administered by the merit system and for retirement purposes" at the end of the third sentence of paragraph (b)(6).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General

Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

50-25-7.10. Annual state information technology report; requirements; standards.

(a) The executive director shall publish in print or electronically an annual state information technology report that shall include:

(1) A report on the state's current and planned information technology expenditures, in cooperation with the Office of Planning and Budget and the state accounting officer, that shall include, but not be limited to, line-item detail expenditures on systems development, personal services, and equipment from the previous fiscal year and anticipated expenditures for the upcoming fiscal year;

(2) A prioritization of information technology initiatives to address unmet needs and opportunities for significant efficiencies or im-

proved effectiveness within the state information technology enterprise; and

(3) A prioritized funding schedule for all major projects or initiatives, as well as cost estimates of the fiscal impact of the recommended information technology initiatives.

The state information technology report shall be submitted to the Governor, the General Assembly, and the board on or before October 1 of each year. The authority may adopt an accrual method of accounting. The authority shall not be required to distribute copies of the annual report to members of the General Assembly, but shall notify the members of the availability of the report in the manner in which it deems to be the most effective and efficient.

(b) Agencies shall be required to submit information technology reports to the authority not more than twice annually and with such content as the board shall define. The authority shall establish standards for agencies to submit the reports or updates. Standards shall include, without limitation, content, format, and frequency of updates. (Code 1981, § 50-25-7.10, enacted by Ga. L. 2009, p. 133, § 3/HB 436; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the introductory language of subsection (a).

CHAPTER 26

HOUSING AND FINANCE AUTHORITY

Sec.
50-26-22. Transfer of personnel to Department of Community Affairs.

50-26-22. Transfer of personnel to Department of Community Affairs.

Effective July 1, 1996, without diminishing the powers of the authority pursuant to Code Section 50-26-8, all personnel positions authorized by the authority in fiscal year 1996 shall be transferred to the Department of Community Affairs. All employees of the authority on June 30, 1996, whose positions are transferred by the authority to the Department of Community Affairs shall become employees of the Department of Community Affairs and shall become employees in the unclassified service as defined by Code Section 45-20-2. (Code 1981, § 50-26-22, enacted by Ga. L. 1996, p. 872, § 13; Ga. L. 1997, p. 143,

§ 50; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-110/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration as defined by Code Section 45-20-6” at the end of the last sentence.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

CHAPTER 27

LOTTERY FOR EDUCATION

Article 1

General Provisions

Sec.

- Sec.

50-27-12. Employees; compensation; restrictions; background investigations; bonding.

50-27-13. Disposition of lottery proceeds; budget report by Governor; ap-
- Sec.

50-27-17. State-wide network of retailers; commissions; certificate of authority; qualifications of retailers; fees for outlets; review of activities; gifts or gratuities.

RESEARCH REFERENCES

ALR. — State lotteries: actions by state or contractor for state, 48 ALR6th ticketholders or other claimants against 243.

ARTICLE 1

GENERAL PROVISIONS

50-27-2. Legislative findings and declarations.

JUDICIAL DECISIONS

Georgia Lottery Corporation entitled to assert sovereign immunity. — Georgia Lottery Corporation (GLC) is entitled to assert sovereign immunity as a bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of the GLC are indelibly intertwined with the state in a manner that qualifies the

GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. *Kyle v. Ga. Lottery Corp.*, 290 Ga. 87, 718 S.E.2d 801 (2011).

Tampering. — Defendant's act of leaning over a store counter, tearing lottery tickets from the ticket's dispenser without paying for the tickets, and scratching the tickets to see if the defendant had won a prize fell within the plain meaning of the term "tampering" in O.C.G.A. § 50-27-27,

in that the defendant's act forever changed the odds of winning for paying customers and directly influenced the potential winning of lottery prizes by future customers. If the defendant's activity did not constitute "tampering" within the meaning of O.C.G.A. § 50-27-27, the express intent of the Georgia Legislature in O.C.G.A. § 50-27-2 that state lottery revenues be maximized and that the lottery be operated with integrity and dignity would be frustrated. *Doe v. State*, 290 Ga. 667, 725 S.E.2d 234 (2012).

50-27-4. Georgia Lottery Corporation created; venue.

JUDICIAL DECISIONS

Georgia Lottery Corporation entitled to assert sovereign immunity. — Georgia Lottery Corporation (GLC) is entitled to assert sovereign immunity as a bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of

the GLC are indelibly intertwined with the state in a manner that qualifies the GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. *Kyle v. Ga. Lottery Corp.*, 290 Ga. 87, 718 S.E.2d 801 (2011).

Cited in *Kyle v. Ga. Lottery Corp.*, 304 Ga. App. 635, 698 S.E.2d 12 (2010).

50-27-5. Membership of board of directors; appointment; terms; filling of vacancies; conflict of interests; reimbursement for expenses; officers; quorum.

JUDICIAL DECISIONS

Cited in *Kyle v. Ga. Lottery Corp.*, 290 Ga. 87, 718 S.E.2d 801 (2011).

50-27-12. Employees; compensation; restrictions; background investigations; bonding.

(a) The corporation shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees, including, but not limited to, production incentive payments; provided, however, that production incentive payments, bonuses, or any other consideration in addition to an employee's base compensation shall not exceed 25 percent of such employee's base compensation. In total, bonuses shall not exceed 1 percent of the net increase over the prior year's deposit into the Lottery for Education Account. No bonuses may be awarded in years in which there is not a

net increase over the prior year's deposit into the Lottery for Education Account.

(b) No employee of the corporation shall have a financial interest in any vendor doing business or proposing to do business with the corporation.

(c) No employee of the corporation with decision-making authority shall participate in any decision involving a retailer with whom the employee has a financial interest.

(d) No employee of the corporation who leaves the employment of the corporation may represent any vendor or lottery retailer before the corporation for a period of two years following termination of employment with the corporation.

(e) Background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the corporation at the level of division director and above and at any level within any division of security and as otherwise required by the board. The corporation shall be authorized to pay for the actual cost of such investigations and may contract with the Georgia Bureau of Investigation for the performance of such investigations. The results of such a background investigation shall not be considered a record open to the public pursuant to Article 4 of Chapter 18 of this title.

(f) No person who has been convicted of a felony or bookmaking or other forms of illegal gambling or of a crime involving moral turpitude shall be employed by the corporation.

(g) The corporation shall bond corporation employees with access to corporation funds or lottery revenue in such an amount as provided by the board and may bond other employees as deemed necessary. (Code 1981, § 50-27-12, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2011, p. 1, § 14/HB 326.)

The 2011 amendment, effective May 15, 2011, in subsection (a), added the proviso at the end of the first sentence, and added the second and third sentences. See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 1, § 17, not codified by the General Assem-

bly, provides, in part, that the 2011 amendment by this Act shall be applicable to postsecondary students beginning in the fall of 2011.

Law reviews. — For article, "Education: Postsecondary Education," see 28 Ga. St. U. L. Rev. 193 (2011).

50-27-13. Disposition of lottery proceeds; budget report by Governor; appropriations by General Assembly; shortfall reserve subaccount.

(a)(1) All lottery proceeds shall be the property of the corporation.

(2) From its lottery proceeds the corporation shall pay the operating expenses of the corporation. As nearly as practical, at least 45 percent of the amount of money from the actual sale of lottery tickets or shares shall be made available as prize money; provided, however, that this paragraph shall be deemed not to create any lien, entitlement, cause of action, or other private right, and any rights of holders of tickets or shares shall be determined by the corporation in setting the terms of its lottery or lotteries.

(3) As nearly as practical, for each fiscal year, net proceeds shall equal at least 35 percent of the lottery proceeds. However, for the first two full fiscal years and any partial first fiscal year of the corporation, net proceeds need only equal 30 percent of the proceeds as nearly as practical.

(b)(1) On or before the fifteenth day of each quarter, the corporation shall transfer to the general fund of the state treasury, for credit to the Lottery for Education Account for the preceding quarter, the amount of all net proceeds during the preceding quarter. The state treasurer shall separately account for net proceeds by establishing and maintaining a Lottery for Education Account within the state treasury.

(2) Upon their deposit into the state treasury, any moneys representing a deposit of net proceeds shall then become the unencumbered property of the State of Georgia and the corporation shall have no power to agree or undertake otherwise. Such moneys shall be invested by the state treasurer in accordance with state investment practices. All earnings attributable to such investments shall likewise be the unencumbered property of the state and shall accrue to the credit of the Lottery for Education Account.

(3) A shortfall reserve shall be maintained within the Lottery for Education Account in an amount equal to at least 50 percent of net proceeds deposited into such account for the preceding fiscal year. If the net proceeds paid into the Lottery for Education Account in any year are not sufficient to meet the amount appropriated for education purposes, the shortfall reserve may be drawn upon to meet the deficiency. In the event the shortfall reserve is drawn upon and falls below 50 percent of net proceeds deposited into such account for the preceding fiscal year, the shortfall reserve shall be replenished to the level required by this paragraph in the next fiscal year and the lottery-funded programs shall be reviewed and adjusted accordingly.

(c)(1) In the budget report to the General Assembly, as a separate budget category entitled "lottery proceeds," the Governor shall estimate the amount of net proceeds and treasury earnings thereon to be credited to the Lottery for Education Account during the fiscal year

and the amount of unappropriated surplus estimated to be accrued in the account at the beginning of the fiscal year. The sum of estimated net proceeds, treasury earnings thereon, and unappropriated surplus shall be designated lottery proceeds.

(2) In the budget report the Governor shall further make specific recommendations as to the education programs and purposes for which appropriations should be made from the Lottery for Education Account. The General Assembly shall appropriate from the Lottery for Education Account by specific reference to it, or by reference to "lottery proceeds." All appropriations of lottery proceeds to any particular budget unit shall be made together in a separate part entitled, identified, administered, and accounted for separately as a distinct budget unit for lottery proceeds. Such appropriations shall otherwise be made in the manner required by law for appropriations.

(3) It is the intent of the General Assembly that appropriations from the Lottery for Education Account shall be for educational purposes and projects only.

(4) If, for any educational purpose or program, less is appropriated in or during the fiscal year than is authorized, the excess shall be available for appropriation the following fiscal year and shall not retain its character as funds for the particular purpose.

(d) Appropriations for educational purposes and programs from the account not committed during the fiscal year shall lapse to the general fund and shall be credited to the Lottery for Education Account.

(e) Except as qualified by this chapter, appropriations from the Lottery for Education Fund shall be subject to Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act."

(f) In compliance with the requirement of the Constitution that there shall be a separate accounting of lottery proceeds, no deficiency in the Lottery for Education Account shall be replenished by book entries reducing any nonlottery reserve of general funds, including specifically but without limitation the revenue shortfall reserve or the midyear adjustment reserve; such programs must be adjusted or discontinued according to available lottery proceeds unless the General Assembly by general law establishes eligibility requirements and appropriates specific funds within the general appropriations Act; nor shall any nonlottery surplus in the general fund be reduced. No surplus in the Lottery for Education Account shall be reduced to correct any nonlottery deficiencies in sums available for general appropriations, and no surplus in the Lottery for Education Account shall be included in any surplus calculated for setting aside any nonlottery reserve or midyear adjustment reserve. In calculating net revenue collections for the revenue shortfall reserve and midyear adjustment reserve, the

state accounting officer shall not include the net proceeds. (Code 1981, § 50-27-13, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 425, § 1; Ga. L. 1994, p. 470, § 1; Ga. L. 1994, p. 1662, § 1; Ga. L. 2004, p. 922, § 10; Ga. L. 2005, p. 694, § 18/HB 293; Ga. L. 2009, p. 313, § 1/HB 157; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2011, p. 1, § 15/HB 326.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the second sentence of paragraph (b)(1) and substituted “state treasurer” for “director” in the second sentence of paragraph (b)(2).

The 2011 amendment, effective March 15, 2011, rewrote subsection (b); and deleted “nor shall any program or project started specifically from lottery

proceeds be continued from the general fund;” following “midyear adjustment reserve;” in the first sentence of subsection (f). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2011, p. 1, § 17, not codified by the General Assembly, provides, in part, that the 2011 amendment by that Act shall be applicable to postsecondary students beginning in the fall of 2011.

JUDICIAL DECISIONS

Cited in *Kyle v. Ga. Lottery Corp.*, 290 Ga. 87, 718 S.E.2d 801 (2011).

50-27-16. Bonding requirements for vendors; qualifications of vendors; competitive bid requirement.

RESEARCH REFERENCES

ALR. — State lotteries: actions by state or contractor for state, 48 ALR6th ticketholders or other claimants against 243.

50-27-17. State-wide network of retailers; commissions; certificate of authority; qualifications of retailers; fees for outlets; review of activities; gifts or gratuities.

(a) The General Assembly recognizes that to conduct a successful lottery, the corporation must develop and maintain a state-wide network of lottery retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lottery games while ensuring the integrity of the lottery operations, games, and activities.

(b) The corporation must make every effort to provide small retailers a chance to participate in the sales of lottery tickets or shares.

(c) The corporation shall provide for compensation to lottery retailers in the form of commissions in an amount of 6 percent of gross sales and may provide for other forms of incentive compensation beginning on July 1, 2016; provided, however, that other forms of incentive compensation may be provided beginning on July 1, 2014, if the Lottery for

Education Account deposits exceed \$1 billion in the previous fiscal year or may be provided prior to July 1, 2016, as authorized by the Governor.

(d) The corporation shall issue a certificate of authority to each person with whom it contracts as a retailer for purposes of display. Every lottery retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its certificate of authority. No certificate shall be assignable or transferable.

(e) The board shall develop a list of objective criteria upon which the qualification of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria, the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, accessibility to the public, integrity, and reputation. The board shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office. The criteria shall include but not be limited to the following:

(1) The applicant shall be current in filing all applicable tax returns to the State of Georgia and in payment of all taxes, interest, and penalties owed to the State of Georgia, excluding items under formal appeal pursuant to applicable statutes. The Department of Revenue is authorized and directed to provide this information to the corporation;

(2) No person, partnership, unincorporated association, corporation, or other business entity shall be selected as a lottery retailer who:

(A) Has been convicted of a criminal offense related to the security or integrity of the lottery in this or any other jurisdiction;

(B) Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one year of imprisonment or a fine of more than \$1,000.00 or both unless the person's civil rights have been restored and at least five years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in this subparagraph;

(C) Has been found to have violated the provisions of this chapter or any regulation, policy, or procedure of the corporation unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature;

(D) Is a vendor or any employee or agent of any vendor doing business with the corporation;

(E) Resides in the same household as an officer of the corporation;

(F) Has made a statement of material fact to the corporation knowing such statement to be false; or

(G) Is engaged exclusively in the business of selling lottery tickets or shares; provided, however, that this subsection shall not preclude the corporation from selling or giving away lottery tickets or shares for promotional purposes;

(3) Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet. Retailers who participate in on-line games shall be charged a uniform application fee for each on-line outlet;

(4) Any lottery retailer contract executed pursuant to this Code section may, for good cause, be suspended, revoked, or terminated by the chief executive officer or his designee if the retailer is found to have violated any provision of this chapter or objective criteria established by the board. Review of such activities shall be in accordance with the procedures outlined in this chapter and shall not be subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act"; and

(5) All lottery retailer contracts may be renewable annually in the discretion of the corporation unless sooner canceled or terminated.

(f) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding \$100.00 in any calendar year, to the chief executive officer, any board member, or any employee of the corporation or to a member of the immediate family residing in the same household as any such person. (Code 1981, § 50-27-17, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1994, p. 599, § 1; Ga. L. 2011, p. 1, § 16/HB 326.)

The 2011 amendment, effective May 15, 2011, substituted the present provisions of subsection (c) for the former provisions, which read: "The corporation shall provide for compensation to lottery retailers in the form of commissions in an amount of not less than 5 percent of gross sales and may provide for other forms of compensation for services rendered in the sale or cashing of lottery tickets or shares." See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 1, § 17, not codified by the General Assembly, provides, in part, that the 2011 amendment by that Act shall be applicable to postsecondary students beginning in the fall of 2011.

Law reviews. — For article, "Education: Postsecondary Education," see 28 Ga. St. U. L. Rev. 193 (2011).

50-27-21. Preservation of lottery proceeds by retailers; accounting procedures; preference accorded proceeds of insolvent retailers.

JUDICIAL DECISIONS

Fiduciary duty.

When a debtor's company failed to deposit sufficient funds into an account for lottery ticket sales proceeds, the debt owed to a lottery corporation was non-dischargeable under 11 U.S.C. § 523(a)(4) because the debtor owed fiduciary duties to the lottery corporation and the debt was the result of the debtor's failure to properly perform those duties. *Ga. Lottery Corp. v. Jackson* (In re Jackson), 429 B.R. 365 (Bankr. N.D. Ga. 2010).

Failure by debtor, the president of a lottery retailer, to remit lottery sale proceeds to the state lottery corporation constituted a defalcation while performing debtor's fiduciary duty, as imposed under O.C.G.A. § 50-27-21(a), entitling the corporation to summary judgment in the corporation's action, which alleged that the debt was nondischargeable under 11 U.S.C. § 523(a)(4). *In re Seema Kauser Akhawala*, 2004 Bankr. LEXIS 1960 (Bankr. N.D. Ga. Oct. 18, 2004) (Unpublished).

Adversary proceedings which the Georgia Lottery Corporation filed against Chapter 7 debtors who were authorized to sell lottery tickets, which alleged that the debtors failed to remit \$6,022 they collected from the sale of lottery tickets, sufficiently alleged that the debtors owed a debt to the corporation that was non-dischargeable under 11 U.S.C. § 523(a)(4) because it resulted from the debtors' de-

falcation while acting in a fiduciary capacity. The Georgia Lottery for Education Act, O.C.G.A. § 50-27-21, which governed Georgia Lottery retailers, set forth all the elements of a technical trust because it created a trust fund, identified the trust res, and outlined a lottery retailer's fiduciary duty to preserve and account for lottery proceeds. *Ga. Lottery Corp. v. Koshy* (In re Koshy), No. 10-06329, 2010 Bankr. LEXIS 3588 (Bankr. N.D. Ga. Sept. 24, 2010).

Defendant, a 51 percent owner of a company that contracted to serve as a Georgia lottery retailer, was a fiduciary under the Georgia Lottery for Education Act because the provisions state that a lottery retailer and officers of a lottery retailer's business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds, O.C.G.A. § 50-27-21(a). Neither debtor's lack of daily supervision at the store nor debtor's lack of supervision on the specific dates provided a convincing legal defense or absolved debtor's fiduciary duty. Furthermore, in this 11 U.S.C. § 523(a)(4) matter, the debtor's unsupported allegations that the lottery proceeds were stolen were insufficient to raise any issue of fact and the owner owed a personal fiduciary duty to the creditor. *Ga. Lottery Corp. v. Kunkle* (In re Kunkle), 462 B.R. 914 (Bankr. N.D. Ga. 2011).

50-27-25. Confidentiality of information; investigations; supervision and inspections; reports of suspected violations; assistance in investigation of violations.

RESEARCH REFERENCES

ALR. — State lotteries: actions by ticketholders or other claimants against state or contractor for state, 48 ALR6th 243.

50-27-27. Penalty for falsely making, altering, forging, uttering, passing, or counterfeiting ticket; penalty for attempting to influence winning of prize.

JUDICIAL DECISIONS

Defendant's knowing presentation of two stolen winning lottery tickets for redemption was a violation of O.C.G.A. § 50-27-27(b) of the Georgia Lottery for Education Act, which forbade influencing the winning of a prize through the use of fraud and deception. Defendant's presentation of the tickets, not the receipt of a lottery prize, was the completed criminal act. *Riddle v. State*, 301 Ga. App. 138, 687 S.E.2d 165 (2009).

Indictment sufficient. — Trial court did not err in convicting the defendant of attempting to influence the winning of a prize by tampering with lottery equipment in violation of the Georgia Lottery for Education Act, O.C.G.A. § 50-27-27(b), because the indictment informed the defendant that the defendant was accused of attempting to influence the winning of Georgia Lottery prizes by tampering with lottery materials, and the defendant was apprised of what the defendant had to be prepared to defend against at trial, the defendant was not harmed by the erroneous reference to “falsely uttering” a lottery ticket, which was proscribed under § 50-27-27(a). *Doe v. State*, 306 Ga. App. 348, 702 S.E.2d 669 (2010), *aff'd*, 2012 Ga. LEXIS 255 (Ga. 2012).

Applicability. — Georgia Lottery for Education Act, O.C.G.A. § 50-27-27(b), applied to the defendant's conduct because the defendant's actions were for the purpose of influencing the winning of a prize offered by the Georgia Lottery Corporation; the defendant took lottery tickets in order to win lottery prizes personally, even though such conduct deprived other customers of the opportunity to lawfully purchase those tickets, and the defendant's action of leaning over the counter that stored the tickets, rolling the tickets off the plastic wheels on which the tickets were housed, ripping the tickets off the rolls, and taking the tickets for the defendant's own use constituted tampering with lottery materials in violation of

O.C.G.A. § 16-10-94(a). *Doe v. State*, 306 Ga. App. 348, 702 S.E.2d 669 (2010), *aff'd*, 2012 Ga. LEXIS 255 (Ga. 2012).

Tampering. — Defendant's act of leaning over a store counter, tearing lottery tickets from the tickets' dispenser without paying for the tickets, and scratching the tickets to see if the defendant had won a prize fell within the plain meaning of the term “tampering” in O.C.G.A. § 50-27-27, in that the defendant's act forever changed the odds of winning for paying customers and directly influenced the potential winning of lottery prizes by future customers. If the defendant's activity did not constitute “tampering” within the meaning of O.C.G.A. § 50-27-27, the express intent of the Georgia Legislature in O.C.G.A. § 50-27-2 that state lottery revenues be maximized and that the lottery be operated with integrity and dignity would be frustrated. *Doe v. State*, 290 Ga. 667, 725 S.E.2d 234 (2012).

Jury instructions. — Trial court did not err in failing to instruct the jury that the state was required to prove that the offense of attempting to influence the winning of a prize by tampering with lottery equipment in violation of the Georgia Lottery for Education Act, O.C.G.A. § 50-27-27(b), was committed in the same manner as set forth in the indictment because no confusion could have resulted from reading the indictment as written since the trial court instructed the jury: (i) no person would be convicted of any crime unless and until each element of the crime as charged was proven beyond a reasonable doubt; and (ii) the burden of proof rested upon the state to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt; in addition, the trial court did not err in charging the jury as a result of having read the indictment, including the erroneous reference to “falsely uttering” a lottery ticket because the body of the indictment clearly defined and described the offense the defen-

dant was charged with having committed. 669 (2010), aff'd, 2012 Ga. LEXIS 255 (Ga. Doe v. State, 306 Ga. App. 348, 702 S.E.2d 2012).

CHAPTER 29

INFORMATION TECHNOLOGY

Sec.		formation systems to contract
50-29-2.	Authority of public agencies that maintain geographic in-	for the provision of services; fees; contract provisions.

50-29-2. Authority of public agencies that maintain geographic information systems to contract for the provision of services; fees; contract provisions.

(a) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, a county or municipality of the State of Georgia, a regional commission, or a local authority created by local or general law that has created or maintains a geographic information system in electronic form may contract to distribute, sell, provide access to, or otherwise market records or information maintained in such system and may license or establish fees for providing such records or information or providing access to such system.

(b) Any fees or license fees established pursuant to subsection (a) of this Code section shall be based upon the recovery of the actual development cost of creating or providing the geographic information system and upon the recovery of a reasonable portion of the costs associated with building and maintaining the geographic information system. The fees may include cost to the county, municipality, regional commission, or local authority of time, equipment, and personnel in the creation, purchase, development, production, or update of the geographic information system.

(c) Any contract authorized by subsection (a) of this Code section shall include provisions that:

- (1) Protect the security and integrity of the system;
- (2) Limit the liability of the county, municipality, regional commission, or local authority for providing the services and products;
- (3) Restrict the duplication and resale of the services and products provided; and
- (4) Ensure that the public is fairly and reasonably compensated for the records or information or access provided.

(d) A county, municipality, a regional commission, or local authority may contract with a private person or corporation to provide the geographic information system records or information or access to the system to members of the public as authorized by this Code section. (Code 1981, § 50-29-2, enacted by Ga. L. 2001, p. 804, § 1; Ga. L. 2008, p. 181, § 18/HB 1216; Ga. L. 2012, p. 218, § 17/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted “the provisions of Article 4 of Chapter 18 of Title 50” for

“subsection (f) of Code Section 50-18-71 or Code Section 50-18-71.2” at the beginning of subsection (a).

CHAPTER 32

GEORGIA REGIONAL TRANSPORTATION AUTHORITY

Article 1

General Provisions

Sec.
50-32-5. Transit Governance Study Commission; creation; members; report; funds.

Article 2

Jurisdiction

50-32-15. Issuance of bonds.

Article 3

Funding

50-32-39. Limitation of indebtedness.

Article 4

Local Government Services

Sec.
50-32-54. Failure of local government to collect and remit amounts due to authority.

Article 6

Construction of Chapter

50-32-71. Exemption of buses, motor vehicles, and rapid rail systems of the authority from motor carrier regulations.

ARTICLE 1

GENERAL PROVISIONS

50-32-5. Transit Governance Study Commission; creation; members; report; funds.

(a) The State of Georgia, particularly the metropolitan Atlanta region, faces a number of critical issues relating to its transportation system and ever-increasing traffic congestion. In light of the dwindling resources available to help solve the problems, it is imperative that all available resources be used to maximum efficiency in order to alleviate the gridlock in and around the metropolitan Atlanta region. There exists a need for a thorough examination of our current transportation system and the methodical development of legislative proposals for a regional transit governing authority in Georgia.

(b) In order to find practical, workable solutions to these problems, there is created the Transit Governance Study Commission to be composed of: four Senators from the Atlanta Regional Commission area to be appointed by the Lieutenant Governor, four Representatives from the Atlanta Regional Commission area to be appointed by the Speaker of the House of Representatives, the chairperson of the Metropolitan Atlanta Rapid Transit Oversight Committee, the chairperson of the Atlanta Regional Commission, the chairperson of the Regional Transit Committee of the Atlanta Regional Commission, one staff member from the Atlanta Regional Commission to be selected by the chairperson of the Atlanta Regional Commission, the executive director of the Georgia Regional Transportation Authority, the general manager of the Metropolitan Atlanta Rapid Transit Authority, and the directors of any other county transit systems operating in the Atlanta Regional Commission area.

(c) The commission shall elect, by a majority vote, one of its legislative members to serve as chairperson of the commission and such other officers as the commission deems appropriate. The commission shall meet at least quarterly at the call of the chairperson. The commission may conduct such meetings and hearings at such places and at such times as it may deem necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish its objectives and purposes as contained in this Code section.

(d) All officers and agencies of the three branches of state government are directed to provide all appropriate information and assistance as requested by the commission.

(e) The commission shall undertake a study of the issues described in this Code section and recommend specific legislation which the commission deems necessary or appropriate. Specifically, the commission shall prepare a preliminary report on the feasibility of combining all of the regional public transportation entities into an integrated regional transit body. This preliminary report shall be completed on or before December 31, 2010, and be delivered to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. The commission shall make a final report of its findings and recommendations, with specific language for proposed legislation, if any, on or before August 1, 2011, to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. The commission shall stand abolished on August 1, 2011, unless extended by subsequent Act of the General Assembly.

(f) The Atlanta Regional Commission in conjunction with the Georgia Regional Transportation Authority and the department's director of planning shall utilize federal and state planning funds to continue the development of the Atlanta region's Concept 3 transit proposal, includ-

ing assessment of potential economic benefit to the region and the state, prioritization of corridors based on highest potential economic benefit and lowest environmental impact, and completion of environmental permitting. Any new transit management instrumentality created as a result of the Transit Governance Study Commission created pursuant to this Code section shall participate in the Concept 3 development activities that remain incomplete at the time of the creation of the new regional transit body. (Code 1981, § 50-32-5, enacted by Ga. L. 2010, p. 778, § 7/HB 277.)

Effective date. — This Code section became effective June 2, 2010.

Cross references. — Georgia Coordinating Committee for Rural and Human Services Transportation of the Governor's Development Council, T. 32, C. 12. Transportation Investment Act of 2010, Special Districts, T. 48, C. 8, A. 5, P. 1.

Editor's notes. — Ga. L. 2010, p. 778, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the "Transportation Investment Act of 2010."

ARTICLE 2 JURISDICTION

50-32-15. Issuance of bonds.

(a) In furtherance of the purposes of the authority, no project of the Georgia Rail Passenger Authority created by Article 9 of Chapter 9 of Title 46 which is located wholly or partly within the geographic area over which the authority has jurisdiction shall be commenced after May 6, 1999, unless such project is approved by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority pursuant to a motion made for that purpose; provided, however, that where such project is an approved transportation control measure pursuant to an approved state implementation plan, such project may proceed consistent with applicable federal law and regulation.

(b) From time to time, by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority, the authority may direct the Georgia Environmental Finance Authority to issue revenue bonds, bonds, notes, loans, credit agreements, or other obligations or facilities to finance, in whole or in part, any project or the cost of any project of the authority wholly or partly within the geographic area over which the authority has jurisdiction, by means of a loan, extension of credit, or grant from the Georgia Environmental Finance Authority to the authority, on such terms or conditions as shall be concluded between the two authorities.

(c) The Georgia Environmental Finance Authority shall be subordinate to the authority in all respects, with respect to authority projects,

within the geographic area over which the authority has jurisdiction; and, in the event of any conflict with the provisions of Chapter 23 of this title, the provisions of this chapter shall prevail in all respects. It is expressly provided, however, that nothing in this Code section and nothing in this chapter shall be construed to permit in any manner the alteration, elimination, or impairment of any term, provision, covenant, or obligation imposed on any state authority, including but not limited to the Georgia Environmental Finance Authority, the State Toll Road Authority, the Georgia Regional Transportation Authority, or the Georgia Rail Passenger Authority, for the benefit of any owner or holder of any bond, note, or other obligation of any such authority. (Code 1981, § 50-32-15, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” twice in subsections (b) and (c).

ARTICLE 3

FUNDING

50-32-39. Limitation of indebtedness.

No bonded indebtedness of any kind shall be incurred by the authority or on behalf of the authority by the Georgia Environmental Finance Authority at any time when the highest aggregate annual debt service requirements of the state for the then current fiscal year or any subsequent fiscal year for outstanding general obligation debt and guaranteed revenue debt, including the proposed debt and treating it as state general obligation debt or guaranteed revenue debt for purposes of calculating debt limitations under this Code section, and the highest aggregate annual payments for the then current fiscal year or any subsequent fiscal year of the state under all contracts then in force to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of 1976 are applicable, exceed 7.5 percent of the total revenue receipts, less refunds of the state treasury in the fiscal year immediately preceding the fiscal year in which any such debt is to be incurred. (Code 1981, § 50-32-39, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2010, p. 949, § 1/HB 244.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” near the beginning of this Code section.

ARTICLE 4

LOCAL GOVERNMENT SERVICES

50-32-54. Failure of local government to collect and remit amounts due to authority.

(a) In the event of a failure of any local government to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government, it shall be the duty of the authority to notify the state treasurer who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government, excluding funds for education purposes, until such local government has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of any court binding the state. (Code 1981, § 50-32-54, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the middle of subsection (a).

ARTICLE 6

CONSTRUCTION OF CHAPTER

50-32-71. Exemption of buses, motor vehicles, and rapid rail systems of the authority from motor carrier regulations.

No provision of Chapter 1 of Title 40 shall apply to any bus, other motor vehicle, or rapid rail system of the authority which provides transit services. (Code 1981, § 50-32-71, enacted by Ga. L. 2005, p. 19, § 2/HB 281; Ga. L. 2012, p. 580, § 26/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted “Chapter 1 of Title 40” for “Chapter 7 of Title 46” near the beginning of this Code section.

CHAPTER 34

ONEGEORGIA AUTHORITY

Sec.

50-34-18. Transfer of positions authorized by authority to Department of Community Affairs.

50-34-18. Transfer of positions authorized by authority to Department of Community Affairs.

Effective July 1, 2002, without diminishing the powers of the authority pursuant to Code Section 50-34-6, all personnel positions authorized by the authority in Fiscal Year 2002 shall be transferred to the Department of Community Affairs. All employees of the authority on June 30, 2002, whose positions are transferred by the authority to the Department of Community Affairs shall become employees of the Department of Community Affairs and shall become employees in the unclassified service as defined by Code Section 45-20-2. (Code 1981, § 50-34-18, enacted by Ga. L. 2002, p. 1059, § 5; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-111/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration as defined by Code Section 45-20-6” at the end of the last sentence of this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

CHAPTER 36

VERIFICATION OF LAWFUL PRESENCE WITHIN UNITED STATES

Sec.

50-36-1. Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations.

Sec.

50-36-2. Secure and verifiable identity document; applicability.
50-36-3. Immigration Enforcement Review Board; membership; duties; sanctions; civil actions.

50-36-1. Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations.

(a) As used in this Code section, the term:

(1) "Agency head" means a director, commissioner, chairperson, mayor, councilmember, board member, sheriff, or other executive official, whether appointed or elected, responsible for establishing policy for a public employer.

(2) "Agency or political subdivision" means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(3) "Applicant" means any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.

(4)(A) "Public benefit" means a federal benefit as defined in 8 U.S.C. Section 1611, a state or local benefit as defined in 8 U.S.C. Section 1621, a benefit identified as a public benefit by the Attorney General of Georgia, or a public benefit which shall include the following:

- (i) Adult education;
- (ii) Authorization to conduct a commercial enterprise or business;
- (iii) Business certificate, license, or registration;
- (iv) Business loan;
- (v) Cash allowance;
- (vi) Disability assistance or insurance;
- (vii) Down payment assistance;
- (viii) Energy assistance;
- (ix) Food stamps;
- (x) Gaming license;
- (xi) Health benefits;
- (xii) Housing allowance, grant, guarantee, or loan;
- (xiii) Loan guarantee;
- (xiv) Medicaid;
- (xv) Occupational license;

- (xvi) Professional license;
- (xvii) Registration of a regulated business;
- (xviii) Rent assistance or subsidy;
- (xix) State grant or loan;
- (xx) State identification card;
- (xxi) Tax certificate required to conduct a commercial business;
- (xxii) Temporary assistance for needy families (TANF);
- (xxiii) Unemployment insurance; and
- (xxiv) Welfare to work.

(B) Each year before August 1, the Attorney General shall prepare a detailed report indicating any “public benefit” that may be administered in this state as defined in 8 U.S.C. Sections 1611 and 1621 and whether such benefit is subject to SAVE verification pursuant to this Code section. Such report shall provide the description of the benefit and shall be updated annually and distributed to the members of the General Assembly and be posted to the Attorney General’s website.

(b) Except as provided in subsection (d) of this Code section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States of any applicant for public benefits.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Verification of lawful presence under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of the Technical College System of Georgia shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(e)(1) An agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

(A) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2; and

(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States and stating:

(i) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

(ii) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and providing the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

(2) The state auditor shall create affidavits for use under this subsection and shall keep a current version of such affidavits on the Department of Audits and Accounts' official website.

(3) Documents required by this subsection may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(f) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public

benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this Code section.

(g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.

(h) Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.

(i) It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of this Code section. On or before January 1 of each year, each agency or political subdivision which administers any public benefit shall provide an annual report to the Department of Community Affairs that identifies each public benefit, as defined in subparagraph (a)(3)(A) of this Code section, administered by the agency or political subdivision and a listing of each public benefit for which SAVE authorization for verification has not been received.

(j) Any and all errors and significant delays by SAVE shall be reported to the United States Department of Homeland Security.

(k) Notwithstanding subsection (g) of this Code section, any applicant for public benefits shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if said affidavit is not required by this Code section.

(l) In the event a legal action is filed against any agency or political subdivision alleging improper denial of a public benefit arising out of an effort to comply with this Code section, the Attorney General shall be served with a copy of the proceeding and shall be entitled to be heard.

(m) Compliance with this Code section by an agency or political subdivision shall include taking all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designated by the United States Department of Homeland Security or other federal agency, including providing copies of statutory authorization for the agency or political subdivision to provide public benefits and other affidavits, letters of memorandum of understanding, or other required documents or information needed to receive authority to utilize the SAVE program or any successor program for each public benefit provided by such agency or political subdivision. An agency or political subdivision that takes all

reasonable, necessary steps and submits all requested documents and information as required in this subsection but either has not been given access to use such programs by such federal agencies or has not completed the process of obtaining access to use such programs shall not liable for failing to use the SAVE program or any such successor program to verify eligibility for public benefits.

(n) In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee of each house of the General Assembly may consider such noncompliance in setting the budget and appropriations.

(o) No employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter; provided, however, that the intentional and knowing failure of any agency head to abide by the provisions of this chapter shall:

(1) Be a violation of the code of ethics for government service established in Code Section 45-10-1 and subject such agency head to the penalties provided for in Code Section 45-10-28, including removal from office and a fine not to exceed \$10,000.00; and

(2) Be a high and aggravated misdemeanor offense where such agency head acts to willfully violate the provisions of this Code section or acts so as to intentionally and deliberately interfere with the implementation of the requirements of this Code section.

The Attorney General shall have the authority to conduct a criminal and civil investigation of an alleged violation of this chapter by an agency or agency head and to bring a prosecution or civil action against an agency or agency head for all cases of violations under this chapter. In the event that an order is entered against an employer, the state shall be awarded attorney's fees and expenses of litigation incurred in bringing such an action and investigating such violation. (Code 1981, § 50-36-1, enacted by Ga. L. 2006, p. 105, § 9/SB 529; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 970, § 3/HB 2; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 794, §§ 16, 17, 18/HB 87; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted "State Board of the Technical College System of Georgia" for "State Board of Technical and Adult Education" in paragraph (d)(7). The second 2011 amendment, effective July 1, 2011, added paragraph (a)(1); redesignated former paragraphs (a)(1) through (a)(3) as present paragraphs (a)(2) through (a)(4), re-

spectively; in subsection (o), added the proviso at the end of introductory language, added paragraphs (o)(1) and (o)(2), and added the undesignated language at the end; and, effective January 1, 2012, substituted the present provisions of subsection (e) for the former provisions, which read: "(e) An agency or political subdivision providing or administering a public benefit shall require every appli-

cant for such benefit to execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States, which affidavit shall state:

"(1) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

"(2) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency." See editor's note for applicability.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, added the paragraph (1) designation; redesignated former paragraphs (e)(1) and (e)(2) as present subparagraphs (e)(1)(A) and (e)(1)(B), respectively; redesignated former subparagraphs (e)(2)(A) and (e)(2)(B) as present divisions (e)(1)(B)(i) and (e)(1)(B)(ii), respectively; redesignated former paragraphs (e)(3) and (e)(4) as present paragraphs (e)(2) and (e)(3), respectively; added "and" at the end of subparagraph (e)(1)(A); substituted "and stating" for ", which affidavit shall state" at the end of subparagraph (e)(1)(B); in division (e)(1)(B)(ii), substituted "providing" for "provide" in the middle and substituted a period for "; and" at the end;

substituted "subsection" for "Code section" in the middle of paragraphs (e)(2) and (e)(3); and substituted "Accounts' official" for "Account's official" at the end of paragraph (e)(2).

Editor's notes. — Ga. L. 2011, p. 794, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21, not codified by the General Assembly, provides for severability, and provides that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22, not codified by the General Assembly, provides, in part, that the amendments of this Code section by that Act shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 35 (2011). For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U. L. Rev. 51 (2011).

For comment, "Immigration Detention Reform: No Band Aid Desired," see 60 Emory L. J. 1211 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 50-36-1 are offenses for which finger-

printing is required. 2011 Op. Att'y Gen. No. 11-5.

50-36-2. Secure and verifiable identity document; applicability.

(a) This Code section shall be known and may be cited as the "Secure and Verifiable Identity Document Act."

(b) As used in this Code section, the term:

(1) "Agency or political subdivision" means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(2) "Public official" means an elected or appointed official or an employee or an agent of an agency or political subdivision.

(3) "Secure and verifiable document" means a document issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies. Secure and verifiable document shall not mean a Matricula Consular de Alta Seguridad, matricula consular card, consular matriculation card, consular identification card, or similar identification card issued by a foreign government regardless of the holder's immigration status. Only those documents approved and posted by the Attorney General pursuant to subsection (f) of this Code section shall be considered secure and verifiable documents.

(c) Unless required by federal law, on or after January 1, 2012, no agency or political subdivision shall accept, rely upon, or utilize an identification document for any official purpose that requires the presentation of identification by such agency or political subdivision or by federal or state law unless it is a secure and verifiable document.

(d) Any person acting in willful violation of this Code section by knowingly accepting identification documents that are not secure and verifiable documents shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both.

(e) This Code section shall not apply to:

(1) A person reporting a crime;

(2) An agency official accepting a crime report, conducting a criminal investigation, or assisting a foreign national to obtain a temporary protective order;

(3) A person providing services to infants, children, or victims of a crime;

(4) A person providing emergency medical service;

(5) A peace officer in the performance of the officer's official duties and within the scope of his or her employment;

(6) Instances when a federal law mandates acceptance of a document;

(7) A court, court official, or traffic violation bureau for the purpose of enforcing a citation, accusation, or indictment;

(8) Paragraph (2) of subsection (a) of Code Section 40-5-21 or paragraph (2) of subsection (a) of Code Section 40-5-21.1; or

(9) An attorney or his or her employees for the purpose of representing a criminal defendant.

(f) Not later than August 1, 2011, the Attorney General shall provide and make public on the Department of Law's website a list of acceptable secure and verifiable documents. The list shall be reviewed and updated annually by the Attorney General. (Code 1981, § 50-36-2, enacted by Ga. L. 2011, p. 794, § 19/HB 87.)

Effective date. — This Code section became effective July 1, 2011. See editor's note for applicability.

Cross references. — Offenses involving illegal aliens, § 16-11-200 et seq. Determination of immigration status of suspects, § 17-5-100. Cooperation of Georgia law enforcement with federal immigration authorities, § 35-1-6. Immigration enforcement review board, § 50-36-3.

Editor's notes. — Ga. L. 2011, p. 794, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21, not codified by the General Assembly, provides for

severability, and provides that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews. — For article on the 2011 enactment of this article, 28 Ga. St. U. L. Rev. 35 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 50-36-2 are offenses for which finger-

printing is required. 2011 Op. Att'y Gen. No. 11-5.

50-36-3. Immigration Enforcement Review Board; membership; duties; sanctions; civil actions.

(a) As used in this Code section, the term:

(1) "Board" means the Immigration Enforcement Review Board.

(2) "Public agency or employee" means any government, department, commission, committee, authority, board, or bureau of this state or any political subdivision of this state and any employee or official, whether appointed, elected, or otherwise employed by such a governmental entity.

(3) "Served" or "service" means delivery by certified mail or statutory overnight delivery, return receipt requested.

(b) The Immigration Enforcement Review Board is established and shall consist of seven members. Three members shall be appointed by the Governor, two members shall be appointed by the Lieutenant

Governor, and two members shall be appointed by the Speaker of the House of Representatives. A chairperson shall be selected by a majority vote of the members. All matters before the board shall be determined by a majority vote of qualified board members. Members shall be appointed for terms of two years and shall continue to hold such position until their successors are duly appointed and qualified. A member may be reappointed to an additional term. If a vacancy occurs in the membership of the board, the appropriate appointing party shall appoint a successor for the remainder of the unexpired term and until a successor is appointed and qualified.

(c) The board shall be attached to the Department of Audits and Accounting for administrative purposes. The members of the board shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with the investigation and review of complaints from funds of the board appropriated to the Department of Audits and Accounting for such purposes.

(d) The Immigration Enforcement Review Board shall have the following duties:

(1) To conduct a review or investigation of any complaint properly filed with the board;

(2) To take such remedial action deemed appropriate in response to complaints filed with the board, including holding hearings and considering evidence;

(3) To make and adopt rules and regulations consistent with the provisions of this Code section; and

(4) To subpoena relevant documents and witnesses and to place witnesses under oath for the provision of testimony in matters before the board.

(e) The board shall have the authority to investigate and review any complaint with respect to all actions of a public agency or employee alleged to have violated or failed to properly enforce the provisions of Code Section 13-10-91, 36-80-23, or 50-36-1 with which such public agency or employee was required to comply. Complaints may be received from any legal resident of this state as defined by Code Section 40-2-1 who is also a legally registered voter. The method and grounds for filing a complaint shall be posted on the Department of Audits and Accounting's website.

(f) The board shall meet at a minimum of once every three months and shall send a notice to all interested parties of the places and times of its meetings. The board shall issue a written report of its findings in all complaints which shall include such evaluations, judgments, and recommendations as it deems appropriate.

(g) The initial review or hearing may, as determined by the board, be conducted by the full board or by one or more board members. Such review panel or members shall make findings and issue an initial decision. The initial decision shall be served upon the complaining party and the applicable public agency or employee that is the subject of a complaint within 60 calendar days. If the findings are adverse to the public agency or employee, or both, such party shall have 30 days to take the necessary remedial action, if any, and show cause why sanctions should not be imposed.

(h) In the event that the remedial action does not occur to the satisfaction of the review panel or members, the reviewing panel or members shall make a recommendation specifying an appropriate sanction. Sanctions may include revocation of qualified local government status, loss of state appropriated funds, and a monetary fine of not less than \$1,000.00 or more than \$5,000.00. Sanctions shall only be imposed against an individual employee or official where there is a finding supported by a preponderance of the evidence that such individual knowingly and willfully violated or failed to abide by the provisions of Code Section 13-10-91, 36-80-23, or 50-36-1.

(i) The initial decision or recommendation for sanctions, or both, shall be served upon the complaining party and the applicable public agency or employee that is the subject of a complaint. Where an initial decision is made by fewer than the entire board, the decision may be appealed to the full board. Appeals shall be filed with the board not later than 30 days following the recommendation for sanctions, or 30 days following the initial decision, if no adverse findings were made. Appeals may be made by the complainant or sanctioned public agency or employee. The full board shall by majority vote affirm, overturn, or modify the initial decision. The board may conduct a further hearing on the matter, or make a final decision based on the record from any previously held hearing by the original reviewing panel or members, or determine that no action is necessary based on the information before the board. Where the initial decision or recommendation is made by the full board, such decision shall be the final decision of the board following 30 days after service on the public agency or employee, unless further action is taken by the board prior to the expiration of the 30 day period.

(j) When a public agency or employee fails to take the specified remedial action, the Attorney General shall be authorized to bring a civil mandamus action against such public agency or employee to enforce compliance with applicable law and the sanctions recommended by the board. Nothing contained in this Code section shall prohibit the Attorney General from seeking any other remedy available by law. (Code 1981, § 50-36-3, enacted by Ga. L. 2011, p. 794, § 20/HB 87.)

Effective date. — This Code section became effective July 1, 2011. See editor’s note for applicability.

Cross references. — Offenses involving illegal aliens, § 16-11-200 et seq. Determination of immigration status of suspects, § 17-5-100. Cooperation of Georgia law enforcement with federal immigration authorities, § 35-1-6. Secure and verifiable identity document act, § 50-36-2.

Editor’s notes. — Ga. L. 2011, p. 794, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Illegal Immigration Reform and Enforcement Act of 2011.’”

Ga. L. 2011, p. 794, § 21, not codified by the General Assembly, provides for severability, and provides that: “(b) The

terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

“(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights.”

Ga. L. 2011, p. 794, § 22, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews. — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 35 (2011). For article, “State Government: Illegal Immigration Reform and Enforcement Act of 2011,” see 28 Ga. St. U. L. Rev. 51 (2011).

CHAPTER 37

GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACTING

Sec.	Sec.
50-37-1. Short title.	50-37-5. Funding for contracts.
50-37-2. Definitions.	50-37-6. Review of capital improvement projects.
50-37-3. State agencies to enter into guaranteed energy savings performance contracts.	50-37-7. Requirements for state agencies.
50-37-4. Contracts provisions.	50-37-8. Statutory construction.

Effective date. — This chapter became effective January 1, 2011.

Cross references. — Multiyear contracts for energy efficiency or conservation improvement, Ga. Const., 1983, Art. VII, Sec. IV, Para XII.

Editor’s notes. — Ga. L. 2010, p. 1091, § 3, not codified by the General Assembly, provides, in part, that: “Section 2 of this Act shall become effective on January 1, 2011; provided, however, that Section 2 of this Act shall only become effective on January 1, 2011, upon the ratification of a resolution at the November, 2010, state-wide general election, which resolu-

tion amends the Constitution so as to authorize obligations of the state for governmental energy efficiency or conservation improvement projects in which vendors guarantee realization of specified savings or revenue gains attributable solely to the improvements. If such resolution is not so ratified, Section 2 of this Act shall not become effective and shall stand repealed in its entirety on January 1, 2011.” The constitutional amendment (Ga. L. 2010, p. 1264) was approved by a majority of the qualified voters voting at the general election held on November 2, 2010.

50-37-1. Short title.

This chapter shall be known and may be cited as the "Guaranteed Energy Savings Performance Contracting Act." (Code 1981, § 50-37-1, enacted by Ga. L. 2010, p. 1091, § 2/SB 194.)

50-37-2. Definitions.

Unless otherwise provided, as used in this chapter, the term:

(1) "Allowable costs" means equipment and project costs that:

(A) The governmental unit reasonably believes will be incurred during the term of the guaranteed energy savings performance contract; and

(B) Are documented by industry engineering standards.

(2) "Authority" means the Georgia Environmental Finance Authority.

(3) "Director" means the executive director of the Georgia Environmental Finance Authority.

(4) "Energy conservation measure" means a program or facility alteration or technology upgrade designed to reduce energy, water, waste-water, or other consumption or operating costs. The term may include, without limitation:

(A) Insulation of the building structure or systems within the building;

(B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(C) Automated or computerized energy control systems;

(D) Heating, ventilating, or air-conditioning system modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made;

(F) Energy recovery ventilation systems;

(G) A training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in costs for contracted services;

(H) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures;

(I) A program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, or use of alternative suppliers as otherwise provided by law, such as, but not limited to:

- (i) Changes to more favorable rate schedules;
- (ii) Negotiation of lower rates, where applicable; and
- (iii) Auditing of energy service billing and meters;

(J) The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy using equipment;

(K) Indoor air quality improvements;

(L) Daylighting systems;

(M) Renewable generation systems owned by the governmental unit, such as solar photovoltaic, solar thermal, wind, and other technologies as identified in the project, provided that all metered distribution and deliveries of electric energy are made by an electric supplier authorized under Part 1 of Article 1 of Chapter 3 of Title 46, the "Georgia Territorial Electric Service Act";

(N) Geothermal HVAC systems;

(O) Water and sewer conservation measures, including, without limitation, plumbing fixtures and infrastructure;

(P) Equipment upgrades that improve accuracy of billable revenue generating systems; and

(Q) Automated, electronic, or remotely controlled systems or measures that reduce direct and other operating costs.

(5) "Guaranteed energy savings performance contract" means a contract between the governmental unit and a qualified energy service provider for evaluation, recommendation, and implementation of one or more energy conservation measures which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented, and guaranteed annual savings which must meet or exceed the total annual contract payments made by the governmental unit for such contract, including financing charges to be incurred by the governmental unit over the life of the contract.

(6) "Governmental unit" means any authority, board, bureau, commission, department, agency, or institution of state or local

government, including, but not limited to, any state-aided institution, or any county, municipal corporation, consolidated government, or school district which has the authority to contract for the construction, reconstruction, alteration, or repair of any public building or other public work.

(7) "Industry engineering standards" means:

(A) Life cycle costing;

(B) The R.S. Means-estimated costing method developed by the R.S. Means Company;

(C) Historical data;

(D) Manufacturer's data;

(E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards;

(F) International Performance Measurement and Verification Protocol; and

(G) Other applicable technical performance standards established by nationally recognized standards authorities.

(8) "Investment grade energy audit" means a study by the qualified energy services provider selected for a particular guaranteed energy savings performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the utility and operation and maintenance cost savings projected to result from the recommended improvements. The investment grade energy audit shall also include a detailed economic analysis of the project's performance over the life of the contract term.

(9) "Operational cost savings" means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more energy conservation measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(10) "Qualified energy services provider" means a person or business with a record of documented guaranteed energy savings performance contract projects that is experienced in the design, implementation, and installation of energy conservation measures; has the technical capabilities to verify that such measures generate guaranteed energy and operational cost savings or enhanced revenues; has the ability to secure or arrange the financing necessary to support energy savings guarantees; and is approved by the authority for inclusion on the prequalifications list.

(11) “State agency” means every state agency, authority, board, bureau, commission, and department, including, without limitation, the Board of Regents of the University System of Georgia. (Code 1981, § 50-37-2, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2011, p. 752, § 50/HB 142; Ga. L. 2012, p. 59, § 2/SB 113.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, in paragraph (4), revised punctuation in the first sentence of the introductory paragraph, and substituted “authorized under Part 1 of Article 1 of Chapter 3 of Title 46, the” for “authorized under the” near the end of subparagraph (4)(M).

The 2012 amendment, effective April 12, 2012, in paragraph (6), deleted “officer, employee,” near the beginning, substituted “state or local government” for “a government agency”, substituted “state-aided institution, or any county, municipal corporation, consolidated gov-

ernment, or school district” for “state agency, state-aided institution, or any county, city, district, municipal corporation, municipality, municipal authority, political subdivision, school district, educational institution, incorporated town, county institution district, other incorporated district, or other public instrumentality”.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “Georgia Environmental Finance Authority” was substituted for “Georgia Environmental Facilities Authority” in paragraphs (2) and (3).

50-37-3. State agencies to enter into guaranteed energy savings performance contracts.

(a) Where not otherwise authorized by another provision of general law or local Act, a governmental unit may enter into a guaranteed energy savings performance contract with a qualified provider in accordance with the provisions of this chapter. The provisions of this chapter shall apply only to contracts entered into by a governmental unit pursuant to the authority granted by this chapter.

(b) Reserved.

(c) When a governmental unit is acting pursuant to the power granted by this chapter and not under any otherwise applicable law, the process of implementing guaranteed energy savings performance contracts for governmental units shall be subject to the following:

(1) The authority shall be authorized to assemble a list of prequalified energy services providers. The director shall attempt to use objective criteria in the selection process. The criteria for evaluation shall include the following factors to assess the capability of the qualified energy services provider in the areas of design, engineering, installation, maintenance, and repairs associated with guaranteed energy savings performance contracts: postinstallation project monitoring, data collection, and verification of and reporting of savings; overall project experience and qualifications; management capability; ability to access long-term sources of project financing; experience with projects of similar size and scope; and other factors determined

by the director to be relevant and appropriate and relate to the ability to perform the project. The prequalification term of the established list of qualified energy services providers shall be three years. The director may add additional qualified energy services providers to the list of qualified energy services providers at any time during the prequalification term. A qualified energy services provider may be removed from the list upon a determination by the director that said qualified energy services provider fails to meet the criteria for continued inclusion; and

(2) Before entering into a guaranteed energy savings performance contract under this chapter, a governmental unit that is a state agency shall issue a request for proposals from at least three qualified energy services providers on the prequalifications list prepared and maintained by the director. Before entering into a guaranteed energy savings performance contract under this chapter, a governmental unit that is a county, municipality, or other local governmental entity shall be required to issue a request for proposals from at least two qualified energy services providers if such providers are available. In addition, a local governmental entity shall publicly advertise the energy services contract opportunity and post notice of such opportunity in the local governmental entity's office and, if available, on the governmental entity's Internet website. A local governmental entity shall not be required to request proposals from providers on the prequalifications list maintained by the director or otherwise be required to utilize the authority's list of prequalified energy services providers.

(3) A governmental unit may thereafter award the guaranteed energy savings performance contract to the qualified energy services provider that best meets the needs of the governmental unit, which need not be the lowest cost provided. A preliminary technical proposal shall be prepared by the qualified energy services provider in response to the request for proposals. Factors to be included in selecting the most qualified energy services provider for award of the guaranteed energy savings performance contract shall include, but not be limited to, the experience of the provider, quality of the project approach, type of technology employed by the provider, overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant to the implementation of the project.

(d) The governmental unit shall select the qualified energy services provider that best meets the needs of the governmental unit in accordance with criteria established by the governmental unit.

(e) Before executing the guaranteed energy savings performance contract, the qualified energy services provider shall provide the

governmental unit with an energy audit report summarizing recommendations for energy conservation measures based on anticipated energy, operational water, or waste-water cost savings or revenue increases resulting from the energy conservation measures. The energy audit report shall include estimates of all costs of installation, maintenance, repairs, and debt service and estimates of the amounts by which energy or operating costs will be reduced.

(f) A governmental unit may enter into guaranteed energy savings performance contracts with each qualified energy services provider selected in accordance with the provisions of this chapter. The governmental unit may elect to implement the energy conservation measures in one or more phases with the selected qualified energy services provider. (Code 1981, § 50-37-3, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2012, p. 59, § 3/SB 113.)

The 2012 amendment, effective April 12, 2012, rewrote this Code section.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2012, quotation marks were removed at the beginning of paragraph (c)(1).

50-37-4. Contracts provisions.

(a) A guaranteed energy savings performance contract may provide that all payments, except obligations on termination of the contract before its scheduled expiration, shall be made over a period of time. The contract shall require the energy performance contractor to provide to the governmental unit an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall which may occur. In the event that such reconciliation reveals an excess in annual energy cost savings, such excess savings shall not be used to cover potential energy cost savings shortages in subsequent contract years. The guaranteed energy savings performance contract shall be for a firm fixed price. The governmental unit may require the qualified energy services provider to provide a payment and performance bond relating to the installation of energy conservation measures in the amount equal to 100 percent of the guaranteed energy savings performance contract.

(b) A guaranteed energy savings performance contract shall include a written guarantee that energy, water, waste-water, or operating cost savings or revenue increases will meet or exceed the cost of the energy conservation measures to be evaluated, recommended, designed, implemented, or installed under the contract within a 20 year period from the date of final acceptance of installation or implementation. Calculation of the energy, water, waste-water, or operating cost savings or revenue increases may take into account rebates, grants, incentives, or similar payments available under published programs which are reasonably anticipated to be received by the governmental unit as a direct result of

the work performed by the qualified energy services provider even though such payments are not included in the qualified energy services provider's contractual guarantee. Escalations and other financial considerations assumed in savings calculations shall be defined in the contract if they are included in the savings calculations and are required to meet the payback criteria and life cycle analysis. Performance guarantees with stipulated savings that have been measured in accordance with the International Performance Measurement and Verification Protocol or other recognized and documented industry engineering standard are allowable and shall be explicitly stated in the contract.

(c) A governmental unit may enter into a third-party installment payment or lease purchase agreement to finance the costs associated with the guaranteed energy savings performance contract and any related hazardous materials abatement. The installment payment or lease purchase agreement may provide for payments over a period of time not to exceed 20 years.

(d) An improvement that is not causally connected to an energy conservation measure may be included in a guaranteed energy savings performance contract if:

(1) The total value of the improvement does not exceed 15 percent of the total value of the guaranteed energy savings performance contract; and

(2) Either:

(A) The improvement is necessary to conform to a law, a rule, or an ordinance; or

(B) An analysis within the guaranteed energy savings performance contract demonstrates that there is an economic advantage to the governmental unit implementing an improvement as part of the guaranteed energy savings performance contract, and the savings justification for the improvement is documented by industry engineering standards.

(e) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures may be included as part of a guaranteed energy savings performance contract without being included in the savings guarantee. In such case, notwithstanding any other provision of law, the installation of these additional measures may be supervised by the contractor performing the guaranteed energy savings performance contract.

(f) The guaranteed energy savings performance contract shall include an agreement for the provision of measurement and verification services to be paid for from the energy and operational cost savings

generated by the project for the term of the contract. It may include maintenance services for the measures installed under the contract. The measurement and verification services shall be performed in accordance with industry standard methods for measuring and verifying savings and equipment performance. Savings which are stipulated shall be specifically noted as such in the guaranteed energy savings performance contract.

(g) Upon execution of a guaranteed energy savings performance contract that reduces the governmental unit's annual electric usage by more than 100 megawatt hours, the governmental unit shall provide written notice to its utility providers describing the energy conservation measures to be installed. Additionally, the authority shall make publicly available an annual list of all guaranteed energy savings performance contracts that are signed in each calendar year. (Code 1981, § 50-37-4, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2012, p. 59, § 4/SB 113.)

The 2012 amendment, effective April 12, 2012, in subsection (g), deleted "Reporting," preceding "Upon execution" at the beginning and inserted "that reduces

the governmental unit's annual electric usage by more than 100 megawatt hours" in the first sentence.

50-37-5. Funding for contracts.

(a) A governmental unit may use funds designated for operating, utilities, or capital expenditures for any guaranteed energy savings performance contract, including, without limitation, for purchases on an installment payment or lease purchase basis.

(b) During the life of the contract, grants, subsidies, or other payments from the state to a governmental unit shall not be reduced as a result of energy savings obtained as a result of a guaranteed energy savings performance contract. (Code 1981, § 50-37-5, enacted by Ga. L. 2010, p. 1091, § 2/SB 194.)

50-37-6. Review of capital improvement projects.

Every state agency shall periodically review all proposed capital improvement projects for potential applicability of this chapter and shall first consider proceeding with a guaranteed energy savings performance contract under this chapter where appropriate. (Code 1981, § 50-37-6, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2012, p. 59, § 5/SB 113.)

The 2012 amendment, effective April 12, 2012, substituted "state agency" for

"governmental unit" at the beginning of this Code section.

50-37-7. Requirements for state agencies.

Requirements for state agencies:

(1) The director shall be authorized to promulgate any rules, regulations, stipulations, and policies necessary to carry out the terms and provisions of this Code section regarding contracting and procurement procedures for state agencies. Any rules, regulations, and policies as prescribed by the director shall be published, and state agencies shall be furnished with copies of the same. The director may fix, charge, and collect reasonable fees for any administrative support and technical assistance or other services provided by the director under this paragraph;

(2) The authority shall provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the authority for promoting and facilitating guaranteed energy savings performance contracts by state agencies. The director shall develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy savings performance contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the director for review and approval;

(3) With regard to the authority's procedures for awarding multiyear guaranteed energy savings performance contracts, the Georgia State Financing and Investment Commission may establish a total multiyear contract value based upon the Governor's revenue estimate for subsequent fiscal years and other information as the Georgia State Financing and Investment Commission may require. In setting the multiyear guaranteed energy savings performance contract authority, the Georgia State Financing and Investment Commission shall take into consideration the known and anticipated obligations of the state agencies proposing to enter into multiyear guaranteed energy savings performance contracts, including, but not limited to, any multiyear guaranteed energy savings performance contracts the state agencies have entered into previously. The Georgia State Financing and Investment Commission may set a total multiyear contract value authority for the authority each fiscal year and may, during the fiscal year, revise such contract value authority as necessary as determined by the Georgia State Financing and Investment Commission. Any multiyear guaranteed energy savings performance contract entered into by state agencies that is not in compliance with the multiyear contract value authority set by the Georgia State Financing and Investment Commission shall be void and of no effect;

(4) At the beginning of each fiscal year, a governmental unit's appropriations shall be encumbered for the estimated payments for multiyear guaranteed energy savings performance contract work to be performed in the appropriation fiscal year. Payment for multiyear guaranteed energy savings performance contract work performed pursuant to contract in any fiscal year other than the current fiscal year shall be subject to appropriations by the General Assembly. Multiyear guaranteed energy savings performance contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the authority, provided funds are available. State agencies shall have the right to terminate without further obligation any multiyear guaranteed energy savings performance contract, provided that the cancellation is subject to the termination provisions of the multiyear guaranteed energy savings performance contract, if the state agency determines that adequate funds will not be available for all of the payment obligations of the state agency. The state agency's determination regarding the availability of funds for its obligations shall be conclusive and binding on all parties to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications;

(5) The provisions of paragraph (4) of this Code section shall be incorporated verbatim in all multiyear guaranteed energy savings performance contracts;

(6) The provisions of this Code section shall not apply to energy efficiency contracts awarded by the authority prior to July 1, 2010. No multiyear guaranteed energy savings performance contracts shall be entered into under the provisions of this Code section until the Georgia State Financing and Investment Commission has established the total multiyear contract value authority for the current and future fiscal years and adopted such fiscal policies regarding multiyear guaranteed energy savings performance contracts authorized under this Code section; and

(7) The authority shall approve any guaranteed energy savings performance contract containing the provisions of subsection (d) of Code Section 50-37-4, regarding improvements not causally connected to an energy conservation measures, or subsection (e) of Code Section 50-37-4, regarding facility alterations required to properly implement other energy conservation measures. (Code 1981, § 50-37-7, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2011, p. 752, § 50/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “the authority” for “the department” in the first sentence of paragraph (2).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2010, “causally” was substituted for “casually” in paragraph (7).

Pursuant to Code Section 28-9-5, in 2011, “paragraph (4)” was substituted for “paragraph (6)” in paragraph (5).

50-37-8. Statutory construction.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter. (Code 1981, § 50-37-8, enacted by Ga. L. 2010, p. 1091, § 2/SB 194.)





